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ABSTRACT

A discussion of H.R. 1407, a bill to establish procedures to improve the allocation and assignment to the electromagnetic spectrum centered on the current policy of allocating portions of the spectrum through lotteries and auction. This report includes a copy of the bill, the text of testimony presented and materials submitted for the record, and transcriptions of discussions at the hearing. Testimony was presented by: (1) Robert Clemons, on behalf of the National Telephone Cooperative Association; (2) James Dale Davidson, chairman of the National Taxpayers Union; (3) Robert A. Mosbacher, Secretary of the Department of Commerce; and (4) Lawrence Rick, on behalf of the Associated Public-Safety Communications Officers. Materials were submitted for the record by the Air Transport Association of America; the Association for Maximum Service Television; the Commerce Department (responses to subcommittee questions by Robert Mosbacher); the Federal Communications Commission (a statement by the chairman, Alfred C. Sikes); the Markle Foundation (a statement by Henry Geller, communications fellow); and the National Association of Broadcasters. (ALF)

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EMERGING TELECOMMUNICATIONS TECHNOLOGIES
(Part 2)

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HEARING

BEFORE THE

SUBCOMMITTEE ON
TELECOMMUNICATIONS AND FINANCE

OF THE

COMMITTEE ON
ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

ON

H.R. 1407

A BILL TO ESTABLISH PROCEDURES TO IMPROVE THE ALLOCATION AND ASSIGNMENT TO THE ELECTROMAGNETIC SPECTRUM

OCTOBER 9, 1991

Serial No. 102-94

Printed for the use of the Committee on Energy and Commerce

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EMERGING TELECOMMUNICATIONS TECHNOLOGIES

WEDNESDAY, OCTOBER 9, 1991

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2322, Rayburn House Office Building, Hon. Edward J. Markey (chairman) presiding.

Mr. MARKEY. Good morning. Today's hearing on spectrum auctions requires the subcommittee to revisit an old issue; how do we best allocate and assign the spectrum. I welcome the appearance of Secretary Mosbacher to help us analyze this issue and to help the subcommittee fashion a spectrum allocation policy that best serves the public interest. For too long this issue has been driven by some who thought the marketplace was the answer, regardless of the question. I am glad the Secretary of Commerce has given this issue his personal attention, and with his leadership I hope that we can find common ground.

This hearing is timely because it occurs just as the attention of the subcommittee shifts from spectrum management to spectrum allocation. Last year the House unanimously approved a bill that would have given the FCC authority to reallocate portions of the spectrum, so as to make this critical resource more available to the public. Stymied by the OMB in a fit of budget myopia, that proposal died in the Senate. This year, with the leadership of Chairman Dingell, the bill, H.R. 531, has been approved by the House and awaits Senate action.

The proposal before us today, H.R. 1407, focuses on the next step in the process; how do we allocate and assign the spectrum freed up by H.R. 531. Mr. Ritter, working with the administration, proposed in March that the spectrum be subject to competitive bidding. His proposal makes few exceptions and designates the proceeds from any auction as going to the general treasury.

We must take notice, however, that events have moved ahead of H.R. 1407. Of course, I am speaking of the Dole and Michel proposal to fund unemployment insurance with an auction of megahertz allocated to land mobile. This proposal makes as much sense as charging admissions for the Washington Monument to finance the Space Station.

I am well aware that proponents of spectrum auction always point to the evils of lotteries whenever trying to boost their case.

Let me be clear. I am no fan of lotteries which are Reagan era artifacts for assigning the spectrum. In fact, back in 1983 and 1984 when the FCC implemented lotteries for cellular licenses, I vigorously opposed those as a misguided and a reckless way of awarding a valuable government resource.

But I am equally concerned that we are replacing one bad idea with another. Replacing lotteries with spectrum auctions used to finance unemployment insurance or to build some ill-defined infrastructure is a little like replacing your allegiance for the Boston Red Sox to the Los Angeles Dodgers. They both will disappoint you.

Frankly, spectrum auctions, like the Red Sox, may well have a future. I am of the view that this issue has suffered because it has been put in political wrapping paper and left on our doorstep. We don't know whether to open it or call the bomb squad. I hope that the efforts of the gentleman from Pennsylvania and the Secretary will be able to push this issue in the direction of rational public policy.

To the extent that this is the goal of the gentlemen, I will work with them to see if we can elevate this issue to a workable and realistic policy goal. I think that all of us share that common objective.

That concludes the opening statement of the Chair.

[Testimony resumes on p. 31.]

[The text of H.R. 1407 follows:]

102D CONGRESS
1ST SESSION

H. R. 1407

To establish procedures to improve the allocation and assignment to the electromagnetic spectrum, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 1991

Mr. RITTER (for himself, Mr. OXLEY, and Mr. TAUZIN) introduced the following bill; which was referred to the Committee on Energy and Commerce

---

A BILL

To establish procedures to improve the allocation and assignment to the electromagnetic spectrum, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Emerging Telecommunications Technologies Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that—

(1) spectrum is a valuable natural resource;

(2) it is in the national interest that this resource be used more efficiently;

(3) the spectrum below 6 gigahertz (GHz) is becoming increasingly congested, and, as a result entities that develop innovative new spectrum-based services are finding it difficult to bring these services to the marketplace;

(4) scarcity of assignable frequencies can and will—

(A) impede the development and commercialization of new spectrum-based products and services;

(B) reduce the capacity and efficiency of the United States telecommunications system; and

(C) adversely affect the productive capacity and international competitiveness of the United States economy;

(5) the United States Government presently lacks explicit authority to use excess radiocommunications capacity to satisfy non-United States Government requirements;

(6) more efficient use of the spectrum can provide the resources for increased economic returns;

(7) many commercial users derive significant economic benefits from their spectrum licenses, both through the income they earn from their use of the

spectrum and the returns they realize upon transfer of their licenses to third parties; but under current procedures, the United States public does not sufficiently share in their benefits;

(8) many United States Government functions and responsibilities depend heavily on the use of the radio spectrum, involve unique applications, and are performed in the broad national and public interest;

(9) competitive bidding for spectrum can yield significant benefits for the United States economy by increasing the efficiency of spectrum allocations, assignment, and use; and for United States taxpayers by producing substantial revenues for the United States Treasury; and

(10) the Secretary, the President, and the Commission should be directed to take appropriate steps to foster the more efficient use of this valuable national resource, including the reallocation of a target amount of 200 megahertz (MHz) of spectrum from United States Government use under section 305 of the Communications Act (47 U.S.C. 305) to non-United States Government use pursuant to other provisions of the Communications Act and the implementation of competitive bidding procedures by

the Commission for some new assignments of the spectrum.

SEC. 3. NATIONAL SPECTRUM PLANNING.

(a) PLANNING ACTIVITIES.—The Secretary and the Chairman of the Commission shall, at least twice each year, conduct joint spectrum planning meetings with respect to the following issues—

(1) future spectrum needs;

(2) the spectrum allocation actions necessary to accommodate those needs, including consideration of innovation and marketplace developments that may affect the relative efficiencies of different portions of the spectrum; and

(3) actions necessary to promote the efficient use of the spectrum, including proven spectrum management techniques to promote increased shared use of the spectrum as a means of increasing non-United States Government access; and innovation in spectrum utilization including means of providing incentives for spectrum users to develop innovative services and technologies.

(b) REPORTS.—The Secretary and the Chairman of the Commission shall submit a joint annual report to the President on the joint spectrum planning meetings con-

ducted under subsection (a) and any recommendations for action developed in such meetings.

(c) OPEN PROCESS.—The Secretary and the Commission will conduct an open process under this section to ensure the full consideration and exchange of views among any interested entities, including all private, public, commercial, and governmental interests.

SEC. 4. IDENTIFICATION OF REALLOCABLE FREQUENCIES.

(a) IDENTIFICATION REQUIRED.—The Secretary shall prepare and submit to the President the reports required by subsection (d) to identify bands of frequencies that—

(1) are allocated on a primary basis for United States Government use and eligible for licensing pursuant to section 305(a) of the Communications Act (47 U.S.C. 305(a));

(2) are not required for the present or identifiable future needs of the United States Government;

(3) can feasibly be made available during the next 15 years after enactment of this Act for use under the provisions of the Communications Act for non-United States Government users;

(4) will not result in costs to the Federal Government that are excessive in relation to the benefits

that may be obtained from the potential non-United States Government uses; and

(5) are likely to have significant value for non-United States Government uses under the Communications Act.

(b) AMOUNT OF SPECTRUM RECOMMENDED.—

(1) IN GENERAL.—The Secretary shall recommend as a goal for reallocation, for use by non-United States Government stations, bands of frequencies constituting a target amount of 200 MHz, that are located below 6 GHz, and that meet the criteria specified in paragraphs (1) through (5) of subsection (a). If the Secretary identifies (as meeting such criteria) bands of frequencies totalling more than 200 MHz, the Secretary shall identify and recommend for reallocation those bands (totalling not less than 200 MHz) that are likely to have the greatest potential for non-United States Government uses under the Communications Act.

(2) MIXED USES PERMITTED TO BE COUNTED.—Bands of frequencies which the Secretary recommends be partially retained for use by United States Government stations, but which are also recommended to be reallocated and made available under the Communications Act for use by non-Unit-

ed States Government stations, may be counted toward the target 200 MHz of spectrum required by paragraph (1) of this subsection, except that—

(A) the bands of frequences counted under this paragraph may not count toward more than one-half of the amount targeted by paragraph (1) of this subsection;

(B) a band of frequencies may not be counted under this paragraph unless the assignments of the band to United States Government stations under section 305 of the Communications Act (47 U.S.C. 305) are limited by geographic area, by time, or by other means so as to guarantee that the potential use to be made by which United States Government stations is substantially less (as measured by geographic area, time, or otherwise) than the potential United States Government use to be made; and

(C) the operational sharing permitted under this paragraph shall be subject to procedures which the Commission and the Department of Commerce shall establish and implement to ensure against harmful interference.

(c) CRITERIA FOR IDENTIFICATION.—

(1) NEEDS OF THE UNITED STATES GOVERNMENT.—In determining whether a band of frequencies meets the criteria specified in subsection (a)(2), the Secretary shall—

(A) consider whether the band of frequencies is used to provide a communications service that is or could be available from a commercial provider;

(B) seek to promote—

(i) the maximum practicable reliance on commercially available substitutes;

(ii) the sharing of frequencies (as permitted under subsection (b)(2));

(iii) the development and use of new communications technologies; and

(iv) the use of nonradiating communications systems where practicable; and

(C) seek to avoid—

(i) serious degradation of United States Government services and operations;

(ii) excessive costs to the United States Government and civilian users of such Government services; and

(iii) identification of any bands for reallocation that are likely to be subject to substitution for the reasons specified in section 5(b)(2)(A) through (C).

(2) FEASIBILITY OF USE.—In determining whether a frequency band meets the criteria specified in subsection (a)(3), the Secretary shall—

(A) assume such frequencies will be assigned by the Commission under section 303 of the Communications Act (47 U.S.C. 303) over the course of fifteen years after the enactment of this Act;

(B) assume reasonable rates of scientific progress and growth of demand for telecommunications services;

(C) determine the extent to which the reallocation or reassignment will relieve actual or potential scarcity of frequencies available for non-United States Government use;

(D) seek to include frequencies which can be used to stimulate the development of new technologies; and

(E) consider the cost to reestablish United States Government services displaced by the

reallocation of spectrum during the fifteen year period.

(3) COSTS TO THE UNITED STATES GOVERNMENT.—In determining whether a frequency band meets the criteria specified in subsection (a)(4), the Secretary shall consider—

(A) the costs to the United States Government of reaccommodating its services in order to make spectrum available for non-United States Government use, including the incremental costs directly attributable to the loss of the use of the frequency band; and

(B) the benefits that could be obtained from reallocating such spectrum to non-United States Government users, including the value of such spectrum in promoting—

(i) the delivery of improved service to the public;

(ii) the introduction of new services; and

(iii) the development of new communications technologies.

(4) NON-UNITED STATES GOVERNMENT USE.—In determining whether a band of frequencies meets

the criteria specified in subsection (a)(5), the Secretary shall consider—

(A) the extent to which equipment is commercially available that is capable of utilizing the band; and

(B) the proximity of frequencies that are already assigned for non-United States Government use.

(d) PROCEDURE FOR IDENTIFICATION OF REALLOCABLE BANDS OF FREQUENCIES.—

(1) SUBMISSION OF REPORTS TO THE PRESIDENT TO IDENTIFY AN INITIAL 30 MHZ TO BE MADE AVAILABLE IMMEDIATELY FOR REALLOCATION, AND TO PROVIDE PRELIMINARY AND FINAL REPORTS ON ADDITIONAL FREQUENCIES TO BE REALLOCATED.—

(A) Within six months after the date of the enactment of this Act, the Secretary shall prepare and submit to the President a report which specifically identifies an initial 30 MHz of spectrum, to be made available for reallocation upon issuance of this report, and to be distributed by the Commission pursuant to competitive bidding procedures;

(B) within twelve months after the date of the enactment of this Act, the Secretary shall

prepare and submit to the President a preliminary report to identify reallocable bands of frequencies meeting the criteria established by this section;

(C) Within twenty-four months after the date of enactment of this Act, the Secretary shall prepare and submit to the President a final report which identifies the target 200 MHz for reallocation (which shall encompass the initial 30 MHz previously designated under subsection (d)(1)(A)); and

(D) The President shall publish the reports required by this Section in the Federal Register.

(2) CONVENING OF PRIVATE SECTOR ADVISORY COMMITTEE.—Not later than twelve months after the enactment of this Act, the Secretary shall convene a private sector advisory committee to—

(A) review the bands of frequencies identified in the preliminary report required by subsection (d)(1)(B);

(B) advise the Secretary with respect to—

(i) the bands of frequencies which should be included in the final report required by subsection (d)(1)(C); and

(ii) the effective dates which should be established under subsection (e) with respect to such frequencies;

(C) receives public comment on the Secretary's preliminary and final reports under subsection (d); and

(D) prepare and submit the report required by paragraph (d)(4) of section 4.

The private sector advisory committee shall meet at least quarterly until each of the actions required by section 5(a) have taken place.

(3) COMPOSITION OF COMMITTEE; CHAIRMAN.—The private sector advisor committee shall include—

(A) the Chairman of the Commission, and the Secretary, or their designated representatives, and two other representatives from two different United States Government agencies that are spectrum users, other than the Department of Commerce, as such agencies may be designated by the Secretary; and

(B) Persons who are representative of—

(i) manufacturers of spectrum-dependent telecommunications equipment;

(ii) commercial users;

(iii) other users of the electromagnetic spectrum; and

(iv) other interested members of the public who are knowledgeable about the uses of the electromagnetic spectrum to be chosen by the Secretary.

A majority of the members of the committee shall be members described in subparagraph (B), and one of such members shall be designated as chairman by the Secretary.

(4) RECOMMENDATIONS ON SPECTRUM ALLOCATION PROCEDURES.—The private sector advisory committee shall, not later than twenty-four months after its formation, submit to the Secretary, the Commission, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science and Transportation of the Senate, such recommendations as the committee considers appropriate for the reform of the process of allocating the electromagnetic spectrum between United States Government users and non-United States Government users, and any dissenting views thereon.

(e) TIMETABLE FOR REALLOCATION AND LIMITATION.—The Secretary shall, as part of the final report re-

quired by subsection (d)(1)(C), include a timetable for the effective dates by which the President shall, within fifteen years after enactment of this Act, withdraw or limit assignments on frequencies specified in the report. The recommended effective dates shall—

(1) permit the earliest possible reallocation of the frequency bands, taking into account the requirements of section 6(a);

(2) be based on the useful remaining life of equipment that has been purchased or contracted for to operate on identified frequencies;

(3) be based on the need to coordinate frequency use with other nations; and

(4) avoid the imposition of incremental costs on the United States Government directly attributable to the loss of the use of frequencies or the changing to different frequencies that are excessive in relation to the benefits that may be obtained from non-United States Government uses of the reassigned frequencies.

SEC. 5. WITHDRAWAL OF ASSIGNMENT TO UNITED STATES GOVERNMENT STATIONS.

(a) IN GENERAL.—The President shall—

(1) within three months after receipt of the Secretary's report under section 4(d)(1)(A), with-

draw or limit the assignment to a United States Government station of any frequency on the initial 30 MHz which that report recommends for immediate reallocation;

(2) with respect to other frequencies recommended for reallocation by the Secretary's report in section 4(d)(1)(C), by the effective dates recommended pursuant to section 4(e) (except as provided in section (b)(4)), withdraw or limit the assignment to a United States Government station of any frequency which that report recommends be reallocated or available for mixed use on such effective dates;

(3) assign or reassign other frequencies to United States Government stations as necessary to adjust to such withdrawal or limitation of assignments; and

(4) publish in the Federal Register a notice and description of the actions taken under this subsection.

(b) EXCEPTIONS.—

(1) AUTHORITY TO SUBSTITUTE.—If the President determines that a circumstance described in section 5(b)(2) exists, the President—

(A) may, within one month after receipt of the Secretary's report under section 4(d)(1)(A), and within six months after receipt of the Secretary's report under section 4(d)(1)(C), substitute an alternative frequency or band of frequencies for the frequency or band that is subject to such determination and withdraw (or limit) the assignment of that alternative frequency or band in the manner required by subsection (a); and

(B) shall publish in the Federal Register a statement of the reasons for taking the action described in subparagraph (A).

(2) GROUNDS FOR SUBSTITUTION.—For purposes of paragraph (1), the following circumstances are described in this paragraph:

(A) the reassignment would seriously jeopardize the national security interests of the United States;

(B) the frequency proposed for reassignment is uniquely suited to meeting important United States Governmental needs;

(C) the reassignment would seriously jeopardize public health or safety; or

(D) the reassignment will result in incremental costs to the United States Government that are excessive in relation to the benefits that may be obtained from non-United States Government uses of the reassigned frequency.

(3) CRITERIA FOR SUBSTITUTED FREQUENCIES.—For purposes of paragraph (1), a frequency may not be substituted for a frequency identified by the final report of the Secretary under Section 4(d)(1)(C) unless the substituted frequency also meets each of the criteria specified by section 4(a).

(4) DELAYS IN IMPLEMENTATION.—If the President determines that any action cannot be completed by the effective dates recommended by the Secretary pursuant to section 4(e), or that such an action by such date would result in a frequency being unused as a consequence of the Commission's plan under section 6, the President may—

(A) withdraw or limit the assignment to United States Government stations on a later date that is consistent with such plan, by providing notice to that effect in the Federal Register, including the reason that withdrawal at a later date is required; or

(B) substitute alternative frequencies pursuant to the provisions of this subsection.

(c) COSTS OF WITHDRAWING FREQUENCIES ASSIGNED TO THE UNITED STATES GOVERNMENT; APPROPRIATIONS AUTHORIZED.—Any United States Government licensee, or non-United States Government entity operating on behalf of a United States Government licensee, that is displaced from a frequency pursuant to this section may be reimbursed not more than the incremental costs it incurs, in such amounts as provided in advance in appropriation acts, that are directly attributable to the loss of the use of the frequency pursuant to this section. The estimates of these costs shall be prepared by the affected agency, in consultation with the Department of Commerce.

(d) There are authorized to be appropriated to the affected licensee agencies such sums as may be necessary to carry out the purposes of this section.

SEC. 6. DISTRIBUTION OF FREQUENCIES BY THE COMMISSION.

(a) PLANS SUBMITTED.—

(1) With respect to the initial 30 MHz to be reallocated from United States Government to non-United States Government use under section 4(d)(1)(A), not later than twenty-four months after

enactment of this Act, the Commission shall complete a public notice and comment proceeding regarding the allocation of this spectrum and shall form a plan to assign such spectrum pursuant to competitive bidding procedures, pursuant to section 8 of this Act, during fiscal years 1994 through 1996.

(2) With respect to the remaining spectrum to be reallocated from United States Government to non-United States Government use under section 4(e), not later than two years after issuance of the report required by section 4(d)(1)(C), the Commission shall complete a public notice and comment proceeding; and the Commission shall, after consultation with the Secretary, prepare and submit to the President a plan for the distribution under the Communications Act of the frequency bands reallocated pursuant to the requirements of this Act. Such plan shall—

(A) not propose the immediate distribution of all such frequencies, but, taking into account the timetable recommended by the Secretary pursuant to section 4(e), shall propose—

(i) gradually to distribute the frequencies remaining, after making the res-

ervation required by subparagraph (ii), over the course of a ten-year period beginning on the date of submission of such plan; and

(ii) to reserve a significant portion of such frequencies for distribution beginning after the end of such ten-year period;

(B) contain appropriate provisions to ensure—

(i) the availability of frequencies for new technologies and services in accordance with the policies of section 7 of the Communications Act (47 U.S.C. 157); and

(ii) the availability of frequencies to stimulate the development of such technologies; and

(C) not prevent the Commission from allocating bands of frequencies for specific uses in future rulemaking proceedings.

(b) AMENDMENT TO THE COMMUNICATIONS ACT.—Section 303 of the Communications Act is amended by adding at the end thereof the following new subsection (u) (indicating that the Commission shall):

"(u) Have authority to assign the frequencies reallocated from United States Government use to non-United

States Government use pursuant to the 'Emerging Telecommunications Technologies Act of 1991': *Provided*, That any such assignment shall expressly be made subject to the right of the President to reclaim such frequencies under the provisions of section 7 of the 'Emerging Telecommunications Technologies Act of 1991'.".

SEC. 7. AUTHORITY TO RECLAIM REASSIGNED FREQUENCIES.

(a) AUTHORITY OF PRESIDENT.—The President may reclaim reallocated frequencies for reassignment to United States Government stations in accordance with this section.

(b) PROCEDURE FOR RECLAIMING FREQUENCIES.—

(1) UNASSIGNED FREQUENCIES.—If the frequencies to be reclaimed have not been assigned by the Commission, the President may reclaim them based on the grounds described in section 5(b)(2) of this Act.

(2) ASSIGNED FREQUENCIES.—If the frequencies to be reclaimed have been assigned by the Commission, the President may reclaim them based on the grounds described in section 5(b)(2) of this Act, except that the notification required by section 5(b)(1) shall include—

(A) a timetable to accommodate an orderly transition for licensees to obtain new frequencies and equipment necessary for their utilization; and

(B) an estimate of the cost of displacing the licensees.

(c) COSTS OF RECLAIMING FREQUENCIES.—Any non-United States Government licensee that is displaced from a frequency pursuant to this section shall be reimbursed the incremental costs it incurs that are directly attributable to the loss of the use of the frequency pursuant to this section.

(d) EFFECT ON OTHER LAW.—Nothing in this section shall be construed to limit or otherwise affect the authority of the President under section 706 of the Communications Act (47 U.S.C. 606).

SEC. 8. COMPETITIVE BIDDING.

(a) COMPETITIVE BIDDING AUTHORIZED.—Section 309 of the Communictions Act is amended to add a new subsection (j) providing that:

"(j)(1) The Commission shall use competitive bidding for awarding all initial licenses or new construction permits, including licenses and permits for spectrum reallocated for non-United States Government use pursuant to

the 'Emerging Telecommunications Technologies Act of 1991', subject to the exclusions listed in subsection (j)(2).

"(A) The Commission shall require potential bidders to file a first-stage application indicating an intent to participate in the competitive bidding process and containing such other information as the Commission finds necessary. After conducting the bidding, the Commission shall require the winning bidder to submit a second-stage application. Upon determining that such application is acceptable for filing and that the applicant is qualified pursuant to subsection (j)(1)(B), the Commission shall grant a permit or license.

"(B) No construction permit or license shall be granted to an applicant selected pursuant to subsection (j)(1)(A) unless the Commission determines that such applicant is qualified pursuant to section 308(b) and section 309(a) of the Communications Act, on the basis of the information contained in the first- and second-stage applications submitted under subsection (j)(1)(A).

"(C) Each participant in the competitive bidding process is subject to the schedule of changes contained in section 8 of the Communications Act (47 U.S.C. 158).

"(D) The Commission shall have the authority in awarding construction permits or licenses under competitive bidding procedures to (i) define the geographic and frequency limitations and technical requirements, if any, of such permits or licenses; (ii) establish minimum acceptable competitive bids; and (iii) establish other appropriate conditions on such permits and licenses that will serve the public interest.

"(E) The Commission shall, within eighteen months after enactment of the 'Emerging Telecommunications Technologies Act of 1991', following public notice and comment proceedings, adopt rules establishing competitive bidding procedures under this subsection, including the method of bidding and the basis for payment (such as flat fees, fixed or variable royalties, combinations of flat fees and royalties, or other reasonable forms of payment); and a plan for applying such competitive bidding procedures to the initial 30 MHz reallocated from United States Government to non-United States Government use under section 4(d)(1)(A) of the 'Emerging Telecommunications Technologies Act of 1991', to be distributed during the fiscal years 1994 through 1996.

"(2) Competitive bidding shall not apply to:

"(A) license renewals;

"(B) the United States Government and State or local government entities;

"(C) amateur operator services, public radio broadcast services, public television broadcast services, public safety services, and radio astronomy services;

"(D) private radio end-user licenses, such as Specialized Mobile Radio Service (SMRS), maritime, and aeronautical end-user licenses;

"(E) any license grant to a non-United States Government licensee being moved from its current frequency assignment to a different one by the Commission in order to implement the goals and objectives underlying the 'Emerging Telecommunications Technologies Act of 1991';

"(F) any other service, class of services, or assignments that the Commission determines, after conducting public comment and notice proceedings, should be exempt from competitive bidding because of public interest factors warranting an exemption.

"(3) Monies received from competitive bidding pursuant to this subsection shall be deposited in the general

fund of the United States Treasury, pursuant to the provisions enacted in appropriations acts.".

(b) RANDOM SELECTION NOT TO APPLY WHEN COMPETITIVE BIDDING REQUIRED.—Section 309(i)(1) of the Communications Act (47 U.S.C. 309) is amended by deleting the period after the word "selection" and inserting in lieu thereof: ", except in instances where competitive bidding procedures are required under section 309(j) of the Communications Act.".

(c) SPECTRUM ALLOCATION DECISIONS.—Section 303 of the Communications Act is amended to add a new subsection (v):

"(v) In making spectrum allocation decisions among services that are subject to competitive bidding, the Commission is authorized to consider as one factor among others taken into account in making its determination, the relative economic values and other public interest benefits of the proposed uses as reflected in the potential revenues that would be collected under its competitive bidding procedures.".

SEC. 9. DEFINITIONS.

As used in the Emerging Telecommunications Technologies Act of 1991:

(1) The term "Act" means the Emerging Telecommunications Technologies Act of 1991.

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(2) The term "allocation" means an entry in the National Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more readiocommunications services.

(3) The term "assignment" means an authorization given by the Commission or the United States Government for a radio station to use a radio frequency or radio frequency channel.

(4) The term "Commission" means the Federal Communications Commission.

(5) The term "Communications Act" means the Communications Act of 1934, as amended (47 U.S.C. 151 et seq.).

(6) The term "Secretary" means the Secretary of Commerce.

Mr. MARKEY. The Chair recognizes the gentleman of New Jersey, the ranking minority member, Mr. Rinaldo, for an opening statement.

Mr. RINALDO. Thank you, Mr. Chairman. I am not going to talk about baseball since I am a Giants fan, and we finally got in the groove last Sunday. I certainly want to commend you for calling this important hearing to focus on the competitive bidding proposal that is contained in H.R. 1407.

I also want to take this opportunity to commend my colleagues, Congressman Ritter, Oxley and Tauzin, for their efforts in addressing the important topic of how spectrum will be allocated as commercial needs for spectrum continue to grow. I believe there is widespread concern in Congress with the current practice of allocating spectrum through a lottery process. While such a procedure made a considerable amount of sense in the early 1980's as the mobile cellular industry was starting to take off, lotteries are the source of a considerable amount of skepticism today.

The recent $50 million private resale of the cellular franchise awarded to the winning lottery participant in Cape Cod serves as an exclamation point to the problem. The public simply cannot, and I don't think they should, tolerate the perpetuation of that type of systematic give away of a scarce public resource.

Let me say that I certainly share the concern of the administration and the sponsors of H.R. 1407 about the lottery procedure. With the likely advent of telecommunications technologies such as HDTV, personal communication services and digital audio broadcasting, we are at a critical juncture in setting our spectrum management and allocation decisions which will have an impact well into the next century.

However, as we consider H.R. 1407, I think it's vitally important that we address several issues that have been raised, legitimate issues that have been raised with respect to competitive bidding. For example, how do we ensure that not only those with the deep pockets but that all legitimate competitive bidding participants are able to obtain newly available spectrum. Some have suggested that a payment over time or a royalty payment system should be considered.

Additionally, how do we ensure that competitive bidding does not relieve spectrum users of their public interest responsibilities. In this regard, some commentators have suggested that those licensees with traditionally heavy public interest responsibilities such as the broadcasters should be exempt from competitive bidding.

Also, how should we expect the funds raised through competitive bidding to best be used to meet the needs of the public, the intended beneficiaries of this competitive bidding proposal. These are just a few of the very, very important procedures that—questions, I should say—I expect to be discussed here today that have to be answered, that have to be resolved and have to be resolved satisfactorily before, in my opinion, we can move forward with this bill.

Finally, before my time runs out, let me certainly avail myself of the opportunity to extend an especially warm greeting to Commerce Secretary Mosbacher, who is appearing here today to testify in favor of the competitive bidding proposal. We welcome you here,

and I look forward to your testimony. I yield back the balance of my time, Mr. Chairman.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes the gentleman from Virginia, Mr. Bliley.

Mr. BLILEY. Thank you, Mr. Chairman. I would first like to welcome Commerce Secretary Mosbacher. We are pleased to have him with us this morning. I will be very interested in what our witnesses have to say concerning the potential for competitive bidding.

The management of the electromagnetic spectrum continues to be of the utmost importance to users and policy makers alike. In fact, although not particularly glamorous, it is one of the most important issues with which we must deal. With a growing array of new uses for the spectrum, the time has perhaps come to reevaluate our management techniques and our national scheme concerning this scarce public commodity. That discussion must necessarily include the revenue raising possibilities of the 200 megahertz of government spectrum we may free up for the public.

We meet here today to explore the possibilities that exist within the spectrum in the context of H.R. 1407. H.R. 1407 can be a reference point from which to launch those possibilities. I commend Congressmen Ritter, Oxley and Tauzin for introducing this measure. In addition, I am also an original co-sponsor of Mr. Dingell's spectrum reallocation bill, H.R. 531. I, again, applaud the efforts of the chairman of the full committee in this regard.

I look forward to hearing the testimony of our witnesses here today on an issue with tremendous potential to America's economic future. Thank you, Mr. Chairman.

Mr. MARKEY. The gentleman's time has expired. The Chair now recognizes the gentleman from Pennsylvania, Mr. Ritter, who has introduced this very important piece of legislation and has been extremely instrumental in shaping this important debate for the future of the telecommunications infrastructure of our country.

The gentleman is recognized for an opening statement.

Mr. RITTER. Thanks, Mr. Chairman. I want to express to you my deep sympathies over the plight of this year's Boston Red Sox. Hopefully, our legislation can do better. With your cooperation Pennsylvania and Massachusetts, although not having done well in baseball this year could perhaps do well in telecommunications cooperation.

I want to thank you for holding the hearing and fulfilling your promise to me, Mr. Oxley and Mr. Tauzin this past March that you would do just that.

Mr. MARKEY. Maybe we could auction the Red Sox.

That might be something that all of us could reasonably decide.

Mr. RITTER. Is that individually or as a team? I would also like to welcome our esteemed Secretary of Commerce in coming here today to testify. It shows the interest of the Department of Commerce and shows the interest of the administration in trying to work out a rational approach to this. I think many of us on the subcommittee and in the administration share the chairman's view about perhaps mixing apples and oranges or funding apple orchards to better the health of orange groves.

Since the introduction of H.R. 1407, the idea of competitive bidding for telecommunication licenses has gained some momentum.

The bidding proposal in H.R. 1407 makes sense from both the revenue perspective and the telecommunications licensing perspective. We have heard about the abuses of the FCC lottery system; however, we do need to recognize that the lottery system did allow cellular telephone licenses to be assigned in a more or less time-efficient manner. The problem of time is still going to be with us.

The problem, of course, was that the lottery system allowed license speculators to enter the lottery, at a relatively low cost, with most having absolutely no intention of building the eventual system. Once they won the lottery a private auction was held, resulting in the speculator becoming a multi-millionaire overnight.

The quick fixes for the lottery system have also been shown to be flawed. Anti-trafficking laws simply delay service to the public. Financial requirements are easily fulfilled due to the inherent value of the license and the willingness of banks to lend to the cellular industry and technical requirements simply requiring the hiring of and engineer.

The solution that makes the most sense is some kind of competitive bidding process. It is important to remember that the competitive bidding proposal in our bill, H.R. 1407, does not change any other requirements or obligations of the licensee. It only changes the method of licensee distribution.

If the FCC controls the bidding such important principles as diversity, minority ownership, the needs of small businesses, the public interest, the emergency services that we will hear from today, can be taken into account. As it is now on the open market, these principles mean absolutely nothing. Furthermore, competitive bidding shouldn't raise the cost of purchasing licenses. A license is worth whatever someone is paying for it, whether the seller be a speculator, a current operator, or the Federal Government.

Mr. Chairman, just thinking for a second about the old way, if all telecommunication licenses are supposed to be held by the entity that is most deserving of this public trust, then why doesn't the FCC conduct comparative hearings for license transfers? This practice was stopped for broadcasting—licensees that are supposedly required to act in the public interest—back in the 1950's.

No one can deny that there does need to be a threshold test on whether or not an applicant is basically qualified. However, determining who is most qualified amongst qualified applicants is extremely costly, it is inefficient, and it is damned difficult. The marketplace will eventually decide who holds the license. I say we should try to get the marketplace involved from the beginning.

There are two more points that I would like to address, Mr. Chairman. First, H.R. 1407—I have a couple of more pages and then I will wrap it up—would not relieve the FCC of its public interest requirement for allocations if there is a demonstrated need for spectrum by one industry or technology. The FCC will still be required to allocate that spectrum to that industry, no matter what the relative value of the license is to that industry. However, if the public interest of two competing interests are equally valid then the FCC may use the value of the licenses as a determining factor.

Finally, the debate on competitive bidding has heated up because of some of the proposed uses for the revenues created by competi-

tive bidding. H.R. 1407 has directed that they be used for deficit reduction. H.R. 3400, the Michel Solomon bill, uses some of these revenues for unemployment compensation extensions.

I am going to introduce within 2 weeks the National Telecommunications Infrastructure Act of 1991. The bill directs that revenues derived from the competitive bidding process would be put in a fund that would first reimburse the government users of that spectrum and, second, uses the money towards telecommunications infrastructure improvement. That helps us to build a national telecommunications network.

Thank you, Mr. Chairman, for your indulgence. I yield back the balance of my time.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes the gentleman from California, Mr. Moorhead.

Mr. MOORHEAD. Thank you, Mr. Chairman. I certainly want to join the others in welcoming our Secretary of Commerce, Secretary Mosbacher, who has done a marvelous job up there so far. We really appreciate your suggestions as far as this legislation is concerned.

Certainly, some other system than the present lottery system is important to distribute the spectrum allocations that we have. This legislation, in recommending a bidding process, I think is one of the best methods we could possibly use. I know a lot of people are concerned that the people with the deepest pockets might get the benefit. But some kind of method for those that don't have quite as deep pockets they could pay out of income or otherwise might be a possible way that we could take care of that matter.

A lot of us have talked a long time this morning and I know we are interested in hearing the Secretary, so I will defer any further comments.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes the gentleman from Ohio, Mr. Oxley.

Mr. OXLEY. Thank you, Mr. Chairman. I, too, would like to welcome the distinguished Secretary of Commerce for being with us today. I have a statement I would like to be made part of the record.

Mr. MARKEY. Without objection, the gentleman from Ohio's statement will be included in the record as will all other written opening statements of all members. I might note that there is a Democratic caucus that is occurring simultaneously with this hearing, which is why the Democrats have not yet arrived. They will be here at the conclusion of that Democratic caucus on the subject of campaign finance reform.

The gentleman from Ohio.

Mr. OXLEY. Thank you, Mr. Chairman. Just to say that this is a very critical issue, it seems to me, for the future of this country in regards to telecommunications. We are looking forward to hearing the remarks of the Secretary on this very important matter.

As you know, I, along with other members on this side of the aisle as well as your side of the aisle, have been involved in involved in trying to craft a solution to what we think is a very exciting opportunity out here. This bill, I think, will go a long way in creating the kind of growth that we need in the telecommunications area. We look forward to your testimony.

I yield back the balance of my time.

[The prepared statement of Mr. Oxley follows:]

STATEMENT OF HON. MICHAEL G. OXLEY

Mr. Chairman, thank you for holding this hearing on H.R. 1407, the "Emerging Telecommunications Technologies Act of 1991." I also want to thank Secretary Mosbacher for appearing before this subcommittee today.

We have before us a very simple bill which should appeal to members from both sides of the aisle. Yet, it scares many away. This bill certainly presents a solution to a problem which grows worse daily—spectrum congestion. Spectrum is the lifeline to over a thousand commercial television stations, nearly 10,000 commercial radio stations, and a host of noncommercial TV and radio stations, long distance microwave transmissions, cellular telephones, pagers, and assorted radio communication devices.

This bill offers the solution to the problem by emancipating 200 megahertz of new spectrum, upon which many of the new technologies can base their expansion into the 21st century. Even more impressive is the fact that this bill offers the solution in populism: the bill makes private enterprise pay for public resources. For the conservatives, we have market economics: paying for a scarce resource will promote efficiency and high technology.

Yet, so many interests have raised concerns about H.R. 1407. Incumbent spectrum users fear that this will cripple their bottom line, even though this bill only applies to awards of new frequencies. These same spectrum users argue that they provide a public service, and that the payment for a spectrum award minimizes the importance of the public interest. This argument lacks soundness for two reasons. First, the bill permits noncommercial users, such as fire and police departments, to circumvent the competitive bidding process. Second, most of the proposed spectrum uses involve primarily commercial services for which free awards will create giant windfalls.

The present lottery system of spectrum allocation was originally created in order to expedite the assignment process, reduce the size of the bureaucracy, lower government spending, and eliminate unnecessary regulations. Instead it has spurned a cottage industry of lawyers and engineers who fabricate applications meeting the FCC requirements with design drawings and financial commitments from banks. These people usually have no intention of building a phone system. Instead they sell their free new allocation of spectrum for millions of dollars in profits.

Henry Wadsworth Longfellow once wrote: "Give what you have. To someone, it may be better than you dare think." Well, this is certainly the case when we simply give away a valuable natural resource such as radio spectrum. So let's give away our spectrum. To a small brigade of businessmen it means millions of dollars in their pockets; to us it means another lost opportunity to fill the treasury's coffers, to our constituents, it means that Congress is once again turning its back on the most logical solution to a simple problem.

Mr. MARKEY. The gentleman's time has expired. All time for statements by subcommittee members has expired. I will now turn to our very distinguished opening witness, the Honorable Robert A. Mosbacher, who is the Secretary of Commerce.

We welcome you back. You are a good friend to this subcommittee. Whenever you feel comfortable, please begin.

STATEMENT OF HON. ROBERT A. MOSBACHER, SECRETARY, DEPARTMENT OF COMMERCE

Secretary MOSBACHER. Thank you, Mr. Chairman and members of the subcommittee. I would like for my formal statement to be included in the record.

Mr. MARKEY. Without objection, it will be included in the record.

Secretary MOSBACHER. In the context of our discussion today, I would like to set out a few facts on which I think we all agree. First, the electromagnetic spectrum is a public resource that should be managed for the ultimate benefit of American consumers and taxpayers. Second, our advanced information society is more

dependent on the spectrum resource with every passing day. It has grown by huge leaps, quantum jumps, and it includes today; radars that guide our planes, news radio stations that inform us, cellular links which have become so big in the last 10 years, and the smart weapons that defend us. We really depend on the electromagnetic spectrum.

Third, with its current problem of delay and speculation, the spectrum assignment process must be redesigned to promote American innovation. In order to promote American commercial innovation based on the spectrum resource, the Bush administration supports legislation that would allocate a substantial amount of radio spectrum away from Federal Government users and make it available to non-Federal users. In addition, there is a critical element in this proposal.

The administration supports legislation to institute competitive bidding for this portion of the spectrum. Competitive bidding would be a more efficient means of apportioning spectrum. It would be a source of revenues to reduce the Federal deficit as well.

The administration supports the Ritter/Oxley/Tauzin bill, H.R. 1407, which incorporates these two important steps in spectrum management. By embracing the concept of competitive bidding, this bill establishes the framework necessary to promote spectrum efficiency and to provide some fiscal relief of the American taxpayer. You have, no doubt, heard from those who raise objections to any significant form of payment for the use of the public spectrum resource. This certainly is understandable for those who have not paid.

But when people make private commercial use of a public resource, such as the natural resources on Federal lands, the normal American way has been for the party that benefits to pay. Thus, competitive bidding and other forms of marketplace transactions have long applied to such things as oil and gas leases, timber and grazing lands. Indeed, the Federal Land Policy and Management Act of 1976 declares—this is national policy—that the United States receive fair market value for the use of the public lands and for our resources unless otherwise provided by statute.

We have been slow to apply this principle to the radio spectrum, perhaps because it is an invisible resource that surrounds us every day. But the electromagnetic spectrum like oil and other minerals and land is a part of the Nation's wealth. The use and the value of the spectrum have grown exponentially over these last years.

H.R. 1407 would reallocate spectrum from Federal to non-Federal use based on a target of 200 megahertz. This legislative proposal would provide the FCC with explicit statutory authority to use competitive bidding when assigning new licenses. It would permit reimbursement of Federal users the cost of moving to other frequencies. But they could bear some costs from such a move or from finding some other means of communicating, such as through fiber optic.

It would also authorize the Commission to exempt certain categories of spectrum users from competitive bidding, just as in real estate we exempt national parks and wildlife reserves from normal market processes. These exemptions would ensure that important

public services including those provided by government entities or existing private licensees would not be disturbed.

Competitive bidding would do more than provide revenues to the Federal Treasury. It would accelerate the pace of innovation and help ensure that the most productive innovators have access to the spectrum that they need. On another level, it would help the United States keep its world competitive position and allow us to grow in preeminence.

I recognize that some people have expressed concern that competitive bidding would tend to favor people with deep pockets. When the Department of Interior makes oil and gas leases available for competitive bids, those rights don't just go to the people with deep pockets. They go to people with good ideas and strong records as successful managers. Moreover, the FCC is specifically authorized to use royalty or lease type payments in combination with or even instead of up front payments in order to address the deep pockets problem. We see this as a very good and sound alternative to the deep pockets problem here.

The administration's competitive bidding proposal protects the public interest without interfering with valid sales transactions. The U.S. taxpayers would share in the spectrum revenue stream. The winning bidders would remain subject to the terms and conditions applied by the FCC just as they are today.

Estimates of the potential revenues from competitive bidding run into the billions. In this time of continuing concern over the Federal deficit and the standard of living of U.S. citizens, we can't afford to ignore this potential contribution to the fiscal health of the U.S. Government. Similar concerns prompted Congress to adopt the Federal Onshore Oil and Gas Leasing Reform Act of 1987, which requires that competitive bidding be used to resolve all competing bids for oil and gas leases on Federal lands.

Congress explicitly stated that it had two purposes in mind, and I quote them: "To enhance the financial returns to the U.S. Government and to promote more efficient management of oil and gas resources on Federal lands." This administration believes the same logic applies to the radio spectrum.

In conclusion, we urge the passage of spectrum efficiency legislation that makes provision for use of competitive bidding. Mr. Chairman and members of the subcommittee, again, I appreciate the opportunity to share the administration's views with you. I am ready to respond to any questions.

[The prepared statement of Secretary Mosbacher follows:]

STATEMENT OF

ROBERT A. MOSBACHER

SECRETARY OF COMMERCE

Thank you for this opportunity to testify on bills pending in the House that address important issues pertaining to the distribution and value of the U.S. spectrum resource. The U.S. Department of Commerce, which serves the President's goals of fostering, promoting, and developing foreign and domestic commerce, and which also manages the U.S. government spectrum, has a vital interest in issues pertaining to the technological, economic, and revenue potential of this important public asset.

I am pleased to be here today to explain why the Bush Administration supports passage of H.R.1407. This bill would reallocate a target of 200 MHz of U.S. government spectrum below 6 Gigahertz (GHz) to non-Federal use; and most importantly, it would also provide the Federal Communications Commission (FCC) with the statutory authority to make future assignments of the spectrum through competitive bidding procedures.

The Administration strongly supports measures to promote development and innovation of telecommunications products and services by instituting measures fostering efficient spectrum management. Such measures should benefit the public both by extending service availability, ensuring that scarce spectrum is put to its most valuable use, and by permitting the public to realize the potential revenues that could accrue to the benefit of the U.S. economy and the well-being of our nation as a whole.

By embracing the concept of competitive bidding, H.R. 1407 establishes the framework necessary to promote efficient use of spectrum and provide fiscal relief for the

American taxpayer. Therefore, should similar legislation reach the President's desk without a competitive bidding component, I would recommend that he veto the bill.

Importance of Telecommunications Today

There is virtually no debate today regarding the importance of telecommunications services to our society. In particular, spectrum-based telecommunications are increasingly relied upon as a part of our national infrastructure: it provides desirable services directly to the public, such as through availability of pagers and cellular telephones; or indirectly, such as through air traffic control, law enforcement, and public safety services.

Moreover, such technologies increasingly make important contributions to the productivity of various commercial businesses. For example, we all benefit by the increasing ease of using mobile communications, which allows information to flow rapidly and efficiently between a company office and workers who are travelling, or between two people on the move.

In supporting legislation to reallocate 200 MHz below 6 GHz to non-Federal use, the Administration is not seeking to diminish the importance of any Federally-provided telecommunications services. Rather, it is anticipated that all these services will continue to be available. The Administration's goal is to free up frequencies for the provision of new or expanded services sought to be offered by commercial entities.

With the explosive growth of telecommunications in recent years, spectrum shortages are beginning to impair the ability of U.S. telecommunications companies to meet customer

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demand, to expand their operations, and to remain competitive globally. Accordingly, the Administration supports concepts embodied in H.R.1407 that seek to make more spectrum available to the commercial sector, while also promoting the efficient use of the spectrum through competitive bidding.

The Administration's Proposal

More specifically, H.R.1407 would provide for reallocation of U.S. Government spectrum to meet private sector demands, with 30 MHz of the reallocated spectrum subject to competitive bidding during the 1994-1996 fiscal year. The FCC would use competitive bidding to assign new licenses, subject to exemptions specified in the bill, or other exemptions found by the FCC to be in the public interest. The FCC is required to initiate a rulemaking to implement competitive bidding, ensuring that interested parties could participate in addressing issues pertaining to the structure of the competitive bidding system.

Further, H.R.1407 provides that U.S. Government users could be reimbursed for certain costs if they are moved to other portions of the spectrum. More significantly, revenues from competitive bidding would be paid into the U.S. Treasury, thereby providing a means to cover such costs, while also providing additional revenues that would benefit U.S. taxpayers at large.

The Benefits of Competitive Bidding

The strength of the Administration's proposal is that it would both promote the efficient use of the spectrum, and also yield some return to U.S. taxpayers from the users of this public resource. The competitive bidding provisions in the bill would achieve both of these objectives, while ensuring that important public interest concerns continue to be met.

A principal benefit of competitive bidding is that it is more efficient and equitable than current FCC procedures for assigning spectrum. Competitive bidding can ensure that spectrum is used by those who most value it, rather than those seeking to make windfall profits. Because the licenses will go to the users who value it the highest, competitive bidding would ensure that spectrum is used more productively than if handed out for free to commercial entities.

Spectrum is a scarce resource, and thus every licensee denies someone else the use of occupied spectrum. This is what gives spectrum a market value. Assignments based on competitive bidding would reflect the scarcity value of the spectrum, as seen in a user's willingness to pay. Because the new licenses would go to those who value them the most, the system will discourage "warehousing," that is, seeking more spectrum than they really need. The value of the limited spectrum can best be determined by a market system of competitive bidding, at least for commercial uses of spectrum. Such procedures are commonly employed by the Federal Government for making other scarce resources available to the public, such as through oil and gas leases.

Other means currently used by the FCC to assign spectrum, such as comparative hearings, are excessively time consuming and costly, thereby often delaying the offering of services to the public. Lotteries may be somewhat faster, but they are becoming increasingly unmanageable because of the huge number of applications received. Both systems often result in windfalls to the winner, who may turn around and sell their business at "private auction" -- thus allowing private entities to realize the scarcity value of the public resource, rather than the taxpayers. Accordingly, competitive bidding offers a superior method over comparative hearings and lotteries for assigning certain frequency bands.

Currently, there is a brisk business in the sale and transfer of cellular franchises, other land-mobile operations, and radio and television stations. Market transfers have thus become a predominant means for acquiring spectrum for these and other commercially valuable services in recent years -- and this is, in many respects, the economic equivalent of purchases and sales of spectrum rights, except that the Government does not realize the revenue.

Estimates of the potential revenues from competitive bidding, although imprecise, are in the billions. Recently, the Department of Commerce assessed the aggregate value of the 50 MHz of the spectrum now used for cellular radio nationwide to be between $46 and $80 billion. The Office of Management and Budget and the Congressional Budget Office have estimated that assigning even a small portion of spectrum through competitive bidding -- such as an initial 30 MHz contemplated under the Administration proposal -- could yield $2.5 billion, even after deducting the cost to Federal agencies that would have to move to other frequencies. At this time of continuing concern over Federal deficits and the U.S. standard of

living due to international competitiveness issues, it is difficult to see how such an important contribution could be denied.

Further, while yielding the benefits just explained, the Administration's competitive bidding proposal has been carefully crafted to take other important concerns into account. For example, competitive bidding would apply prospectively to the assignment process in recognition of the fact that many existing licensees have already paid large fees in the market to acquire their businesses. This "grandfathering" of current users would also avoid disruption to existing services relied upon by the public. For the same reasons, license renewals would be exempt from competitive bidding.

Other exemptions are also included for spectrum uses that are essentially non-commercial or that have important public service attributes. As mentioned, the FCC would also have the power to grant additional exemptions through its rulemaking processes if it found them to be warranted under the public interest standard in the Communications Act of 1934.

Finally, it is important to recognize that successful bidders would not be given carte blanche in the use of the frequencies they obtain. The use of the frequencies transferred would still be determined by the FCC's allocation process. Moreover, successful bidders would be required to operate under FCC licenses as today, with terms, conditions, and renewal requirements imposed under the Communications Act. Thus, the Administration is not proposing to "sell" the spectrum to private interests, but is simply proposing that the FCC use competitive bidding in deciding who gets to use certain parts of the spectrum -- rather

than continuing the current, inefficient and inequitable comparative hearing or lottery processes.

Conclusion

In conclusion, the Administration believes that legislation to reallocate a target of 200 MHz of spectrum from U.S. Government to non-U.S. Government use should also include authority for the FCC to implement competitive bidding procedures. Such market-based procedures would further the goals of promoting the efficient use of the spectrum, while also providing a significant source of revenue for the U.S. Treasury. In this way, the entire public would share in the multiple benefits stemming from recognition of the spectrum resource as a valuable, national asset.

Mr. Chairman and Members of the Subcommittee, again, I appreciate this opportunity to share the Administration's view with you, and I am ready to respond to any questions you may have.

Mr. MARKEY. Thank you, Mr. Secretary, very much. The Chair will recognize himself now for a round of questions. I would like to begin by asking if you could, to help us distinguish between the Dole bill and H.R. 1407, each of which have the support of the administration but which stand in contradiction with each other in several respects.

For instance, the Dole/Michel bill exempts broadcasters and specialized mobile radio service but H.R. 1407 does not contain any such exemption. Also, the Dole/Michel bill would require an auction before the NTIA study is complete.

Could you help us to reconcile the differences between the H.R. 1407 approach and the Dole/Michel approach in terms of where you stand, and where your Agency stands on the subject?

Secretary MOSBACHER. As you know, Mr. Chairman, we have backed the Ritter/Oxley/Tauzin bill, H.R. 1407. We also backed the Dole bill. As a matter of fact, I talked to Senator Dole earlier this morning about his bill and there are some things that both move the timetable up sufficiently that it would make it very tight. There are other things such as the broadcast exemption that are not as broad.

Then, there are other areas, the 50 megahertz going up for bid earlier rather than 30, and we wanted some clarification of the small business exemption which is different also.

First, he told me, and he wanted me to pass on to you and the committee, that he certainly has some flexibility and is willing to work with all of us on it. Second, he stated that to clarify the small business exemption, besides flexibility there what he was searching for is what we are all working on, and in my view can be handled on small business by either sharing of royalties, sharing of profits, payment over a longer period of time, a combination of all the above, rather than having to meet the up front big payment which is the deep pocket problem.

Mr. MARKEY. Would you consider broadcasters small businesses?

Secretary MOSBACHER. No, this is different I am not talking about that.

Mr. MARKEY. Good.

Secretary MOSBACHER. I went into small business. Let me finish the small business aspect of it, please, sir.

Mr. MARKEY. Can I just say, Mr. Secretary, the problem is that the gentleman from Pennsylvania would like there to be a more compact questioning period by all members. As a result, the questions which I ask have to get answered within a constrained time period, or else the——

Mr. RITTER. The chairman doth read my mind.

Mr. MARKEY. On the broadcasters on the specialized mobile radio, where would you come down on that; would you want to grant them an exemption or not?

Secretary MOSBACHER. My personal preference is not to exempt them.

Mr. MARKEY. Do you think that we should move forward without Commerce and NTIA completing their study or not; how would you feel about that?

Secretary MOSBACHER. Let me say that although it would be difficult, I think we could make the study shorter and more compact

and finish more quickly. Most things in the government take a lot more time than you ever think, but when pushed they can be condensed. So, I think we could make the study over a shorter period. I think we could condense a lot of these.

Mr. MARKEY. Let me move on then to our posture, vis-a-vis, our international competitors. As you know, the Germans and Japanese, most of our major economic rivals, they do not auction the spectrum. If we go to an auction it will, without question, will increase the up front costs to entrepreneurs in our country in a way which will not affect those entrepreneurs in our major competing telecommunications rivals.

In your opinion, will this drive up costs to those entrepreneurs? Have you factored that in, in terms of what the Japanese and Germans amongst others are pursuing as their policy in terms of innovation?

Secretary MOSBACHER. You are talking, or the Congressman from Pennsylvania is talking about apples and oranges. To compare us with the Japanese methodology is more like apples and steel. Japan has been accused of being called incorporation—there is no comparison.

Mr. MARKEY. The comparison is valid.

Secretary MOSBACHER. I think that I——

Mr. MARKEY. I just said I think the comparison is valid to this extent, which is that you are right, it is Japan, Inc. To the extent to which they work very cooperatively with their entrepreneurs to ensure that they have all the incentives to get into these key technologies. I agree with you that there is a solid business governmental partnership, which puts many of our independent entrepreneurs at a competitive disadvantage, especially in the global marketplace.

To the extent to which we as a government load on yet another burden on them, which the Japanese government is taking off the backs of their entrepreneurs, how does that factor in long term in terms of our entrepreneurs' ability to compete?

Secretary MOSBACHER. First, the comparison is invalid because they have Karitzu. We don't want that. I know I don't, and I don't think you do.

Mr. MARKEY. No, I don't.

Secretary MOSBACHER. We still have people—let's get back to the basic question of is it going to cost more for entrepreneurs to go through the bidding process. They still end up and will end up with the actual users bidding on these, but it's a windfall for the lottery winner rather than why not have that go to the people in the government.

Mr. MARKEY. I am not disagreeing with that. I am just wondering, with your conclusion in terms of where the money goes, I am wondering how much money for example do you think is involved here? Today government studies—your Agency indicates that the 50 megahertz of spectrum now used for cellular is now valued between $46 billion and $80 billion. That's today, though. What was it worth 10 years ago in a nascent industry?

Would it have even, the bidding, would it have even drawn $1 billion or less? Would many of these people have been able to get into that business at that particular point in time? In other words,

you hear a lot of figures that are thrown around over in the Senate and other places about how much money this will bring in today, when they are comparing apples and oranges. They are comparing a very mature industry, the cellular phone industry today, with a whole set of nascent technologies more equivalent to where cellular was 8, 10, 15 years ago in terms of those industry abilities to be able to bid for spectrum.

What kind of revenues would you project, Mr. Secretary, could be derived in this era at this stage of technological development?

Secretary MOSBACHER. We worked out a projection of $2.5 billion. I think in my, again, personal observation, that's very conservative. It could be less, but I would personally bet it would be a lot more. Even for U.S. Government that's quite a bit of money.

When we look back, not only cellular phone but other information systems were in their infancy 10 to 20 years ago. Now, we are looking at things that are worth a lot of money.

Mr. MARKEY. So, let me ask you this, then. Looking now today at a very mature industry, the cellular phone industry, how do you think a bidding process will affect their capacity or other mature industries' capacity to gobble up this available spectrum and put at a competitive disadvantage the industries that would be more equivalent to the cellular industry 10 years ago? That is, that nascent infant industry that had the entrepreneurs in it.

Will we so tilt it away from those kinds of people that they could never be born under this new formula. Have you ever thought that through?

Secretary MOSBACHER. Yes, we have discussed that. The FCC has the ability to label certain spectrum for certain uses. They do, and they don't label it all for cellular phone use even though they may have right now the deeper pockets of the higher value, or whatever you want to call it. They could certainly continue to do that. I don't see any problem with that.

Mr. MARKEY. In your opinion, should we have exemptions for struggling and young technologies?

Secretary MOSBACHER. No. Why not let the marketplace still dictate the value rather than, frankly, government bureaucracy and bureaucrat dictating the——

Mr. RITTER. Would the chairman yield for a quickie insertion, just for 5 seconds?

Mr. MARKEY. Sure.

Mr. RITTER. I would like to mention the idea that we do talk about pioneer's exemption the FCC can allocate to this high tech, high promise industry, this horizon industry, the PCN today, the cellular phone of yesterday. It can be done under the bill.

Mr. MARKEY. I understand that. I am not sure the administration is reflecting that today though in their testimony.

Secretary MOSBACHER. Mr. Chairman, let me just say that the administration is not doing anymore than reflecting what the author of the bill is saying when we say we back the bill. If that's in the bill, I would say that does reflect the administration's position.

Mr. MARKEY. My concern really is that I don't want to create, and I don't think any of us want to create a situation, where the playing field is so unlevel that the entrepreneur, that the young

geniuses who are out there want to get into an area but can't do so because the behemoth will basically just be able to——

Secretary MOSBACHER. You mean, just like it is today.

Mr. MARKEY. Again, I totally oppose the Reagan concept on this. There is no question about it, I always thought it was a crazy system that they put in place. I am asking for some sort of appreciation—because I come from 128 and because that's my district, I realize that most of these companies start up as 50 and 75 person shops. That's where the new ideas in our society come from, and that's where the new jobs in our country are created.

Secretary MOSBACHER. I couldn't agree with you more, Mr. Chairman.

Mr. MARKEY. I am just very concerned that the hundreds of smaller companies that should start up in this field are given the proper incentive to take the risk, to roll the dice, to put some money together and just get out there with their ideas and not feel as though they are going to be stepped on by the economic behemoth that are just going basically to prey upon their economic vulnerability at those relatively early stages of corporate growth.

Secretary MOSBACHER. I totally agree with you, and that's what I think the Ritter/Oxley/Tauzin bill says. Also, that's why I specifically talked to Senator Dole, to see if that's what he had in mind. That's why I spent that time talking about small business.

So, I think we need to make sure we have well covered the start up people that you and I are talking about, the small businesses, the minorities and other public exceptions that need to be taken into consideration. Remember, the way it is today as of now, if it goes into a lottery form the odds are that the behemoth is going to end up——

Mr. MARKEY. Again, I never supported a lottery. I always thought it was a crazy idea, and I have always made that point.

Secretary MOSBACHER. Even when the Carter administration first thought of it?

Mr. MARKEY. It was implemented, as you know, as part of the——

Secretary MOSBACHER. I can't help that the Reagan administration was so efficient.

Mr. MARKEY. For better or worse, I was for Teddy Kennedy, so just let that sit on the record. I didn't like the special benefits he gave to oil men, do you know what I am saying?

Secretary MOSBACHER. I was always for George Bush, what do you think of that?

Mr. MARKEY. I thank you, Mr. Secretary, very much. I think we can work this out, to be quite frank with you. I think that the philosophical basis for an understanding among all of us is there. I think we have to work on the words a little bit more, to make sure that we do actually build in the legal protections for all of these parties who are out there who could potentially——

Secretary MOSBACHER. We would very much like to work with you on this. I think there is flexibility on both sides. We should, I hope, get the job done.

Mr. MARKEY. Thank you, Mr. Secretary. The gentleman from New Jersey, Mr. Rinaldo.

Mr. RINALDO. Thank you, Mr. Chairman. Mr. Secretary, perhaps you can clear up in my mind how administration support that you have referred to numerous times during your testimony and during the questions propounded by the chairman, how administration support for a competitive bidding process evolved and whether or not any other alternatives were considered or should be considered?

Secretary MOSBACHER. We have talked about alternatives. We do support the competitive bidding because it's market-oriented. You start with the basic premise that the market knows better how to allow business and the small business, including small business as well as big business, make the most of use.

Any alternative, and there are alternatives and we may end up thinking that there are exceptions where an alternative approach of not bidding is better in certain narrow cases. In general, when you start going to anything that is based on any form within the government, making the decision, which means it is subjective and can be political, can be biased and at best is one man or woman or one committee's view, is not as good as the marketplace. That's the basic premise.

Mr. RINALDO. A major concern of mine relates to, as I mentioned in my opening statement, to the public interest responsibilities of commercial spectrum users. Would you agree that it must be made clear that the competitive bidding process and thus payment for spectrum will not supplant the Communications Act, mandate that spectrum users meet their public interest responsibilities?

Secretary MOSBACHER. I agree with that, and those that are now licensed would continue under the same system that they have been, which is that they meet the public service aspect and come up for renewals the same way. They are reviewed and subjected to those same systems, and that would continue.

Mr. RINALDO. In light of that response and their rather significant public interest responsibilities, how do you reconcile that position with the response you gave to Chairman Markey regarding whether or not it would be reasonable to consider an exemption for broadcasters from the competitive bidding process?

Under the circumstances you just mentioned, I would think that it would be reasonable to have an exemption in there for broadcasters.

Secretary MOSBACHER. For those licenses that are in place, yes. Not for the future though.

Mr. RINALDO. In other words, what you are saying is, for people already in place, already have public interest responsibilities, you would grandfather them in?

Secretary MOSBACHER. Correct.

Mr. RINALDO. Let me ask another important consideration that was discussed here, how funds raised through competitive bidding should be expended. Under H.R. 1407 the funds would go into the Treasury. Other ideas under consideration have been mentioned. They range from funding and unemployment compensation program as you know, to funding for public broadcasting.

How do you feel the funds should be expended? What do you think should be done with the money?

Secretary MOSBACHER. Well, let me say those with a broader ken than mine would have to make that decision. How is that, for a forthright answer, sir?

Mr. RINALDO. What is your personal view though, as to the funds?

Secretary MOSBACHER. A general use. Personally, I would like to see more revenue go to deficit reduction, but that's my personal view. A general rule with certainly, obviously, some exceptions. Since we do support the Dole bill, if that's what's decided upon we obviously support it.

Mr. RINALDO. Would you agree that we need to insulate the FCC's initial allocation decisions on the best use for spectrum from budgetary revenue raising considerations? In other words, shouldn't we ensure that the FCC makes decisions in the public interest as to what spectrum should be allocated for State and local government, for example, public safety and not for commercial purposes?

If so, if you agree with that, how do we insulate the allocation process?

Secretary MOSBACHER. First of all, again, having talked to Chairman Sikes, I don't think there is any doubt that these allocations will be done as they have been done, are done, and should be done in the future, always keeping the public interest as preeminent; safety, and whether it's minority interest or whether it's other public interests, should be safeguarded.

I suppose I believe personally, having put in an FCC that is empowered to do that, you have to delegate that to them and use what they have historically done, and that is allocate it properly.

Mr. RINALDO. Thank you very much. I have no further questions, Mr. Chairman.

Mr. MARKEY. The gentleman's time has expired. The gentleman from Pennsylvania.

Mr. RITTER. Thanks, Mr. Chairman. I want to associate myself with the chairman's comments about the need to nurture the small and creative entrepreneurs and those small and creative high tech businesses which become the large and the global competitors of tomorrow. I guess that's like saying I support motherhood and apple pie.

The question then becomes, how do you rationalize that very important concern with the other very important concerns that spectrum is, indeed, scarce; it is, indeed, very valuable; and, it is an essential part of doing business with an extremely valuable commodity; that, that commodity have some value reflecting its capacity to earn in the marketplace.

In a sense, I think we somehow have to come to grips with the fact that the cost of the license to valuable spectrum is part of the legitimate cost of doing business with that spectrum, be it the small, medium or large. But, in order to accommodate some of the thoughts of the chairman which I share, I think the idea of kind of installment buying or some such is the kind of things we can also consider and, again, the pioneer exemption that the FCC has the ability to make.

We don't give away oil leases to that small, innovative entrepreneurial entity simply because they are small, innovative and entre-

preneurial. These do have some value to the public, just as Boeing doesn't lease expensive jumbo jets to some small, innovative company; that there is a value to these things that has to come through in doing business at some point.

Plus, I would like to quote on the same line of thinking page 26, line 18 to 22: "Competitive bidding shall not apply to any of the service classes, services or assignments that the Commission determines after conducting public comment and notice proceedings should be exempt from public bidding because of public interest factors warranting and exception." That is, by the way, letter F of the exemptions from competitive bidding.

Mr. Secretary, there is this language in the bill that allocates these funds to the general fund, those funds raised from competitive bidding. I would like—perhaps you may wish to comment on the idea that spectrum—moneys raised from the competitive bidding of the auctioning of certain spectrum could be used towards building the telecommunications infrastructure. In other words, something like the concept of user fee. It also avoids the potential black hole that some of these revenues can fall into going into general funds.

The other side of the coin which is, whether it's unemployment or a new and innovative senior citizens prescription drug program that someone can come up with in competition to the unemployment proposal.

Wouldn't it make sense to allocate at least a goodly portion of these funds to whence they can do a kind of most good for telecommunications?

Secretary MOSBACHER. Congressman Ritter, having spent most of my life in the private sector, what is referred to as a black hole is a big deficit. If you had a big loss and a deficit in your own business you would try to fill that first with any revenue you got in. It's not a black hole that is sort of out there, that doesn't make any difference.

It is the difference between certainly an individual or company staying alive eventually and not. I am afraid I happen to believe that eventually applies to the United States. I think that's our first need and our first problem, and that's what I would pick first. That's what I was talking about. That goes before any other good and even necessary use of funds. That's a personal view.

Mr. RITTER. Mr. Secretary, getting back to the potential revenues raised. The initial 30 megahertz contemplated under the administration proposal in your statement said it could yield $2.5 billion even after deducting the cost of Federal agencies that would have to move to other frequencies. I think we are talking about just $2.5 billion for 30 megahertz. If you look towards on the order of 200 megahertz it gets to be a lot larger—the number.

I guess my thought is that infrastructure is so critical, and in order to build the economy that grows sufficiently in order to pay off our debts we are being out-invested severely in infrastructure.

Mr. MARKEY. The gentleman's time has expired. The gentleman from Ohio, Mr. Oxley.

Mr. OXLEY. Thank you, Mr. Chairman. Mr. Secretary, those of us who introduced the original bill, Mr. Ritter, Mr. Tauzin and myself, perhaps were a bit naive in thinking that the proceeds from these

auctions would be used appropriately. Some of the questions that Mr. Ritter asked, I think, were getting at that.

One of my biggest fears has apparently come into reality, in that the first opportunity that the Congress saw to spend the money that we haven't even raised yet by the auction that we don't even know how much will be raised, we are eagerly trying to spend. I love Senator Dole, he's a great friend and a great Senator. This idea that we would tie whatever that particular spending issue happens to be to the future auctions, it gives me a great deal of concern.

I would suggest that everybody on this committee and everybody in the Senate and many people in the administration would have their own kind of fill in the blanks program for what we would do with this money that we raised from the auction that nobody really knows how much we are going to raise in the first place. You could fill it in. That's unemployment benefits, public broadcasting, farm supports, homeless, medical care, notch babies, infrastructure.

Again, it's just limitless to what we could use that money for. It frankly concerns me that we are apparently starting on that slippery slope. If, indeed, the President vetoes the Democrat Unemployment Compensation extension which he clearly will, then the next step would be the Dole proposal. I have no doubts that the Dole proposal in some form will fly through the Congress and be signed by the President.

Is it your estimation that we have set a precedent for the allocation of those funds. If indeed we have set some kind of a pattern, have we not really defeated the purpose for which we introduced our bill in the first place?

Secretary MOSBACHER. I would say that it would not be defeating the purpose. I think the reason that that bill makes sense is to get revenue for the good of the taxpayer and the consumer and the citizens of this country, rather than have it go to some speculator or some group—I don't want to lawyer bash—but put together by some group, and very often lawyers because they understand it best, maybe to give them a compliment, they are being entrepreneurial in this area.

That revenue rather than its application, that revenue belongs to the people of the United States of America. Now, what, through their duly elected representatives they do with it, I, frankly, am not in a position because I don't have the broad ken to comment on it. It is more efficient, it helps the people in the industry be more innovative, it helps the consumer get quicker new services, and the revenue is important to the country. That's where I stand.

Mr. OXLEY. I can't disagree with any of that. It just seems to me that we are really starting down a very dangerous slope here if, every time we come into a situation where the Congress is in a position to spend money and we are pretty good at that, that we will look to this, what appears to be a bottomless pit as far as the ability to raise revenue.

The estimates that the chairman used, I guess are as good as any, in terms of what we might raise overall in this effort. Clearly, all of us agree I think that the current system is wrong and that we ought to go towards an auction system. Indeed, if it raises $46

billion—I think that was the outside number that you used, Mr. Chairman——

Mr. MARKEY. What I was saying is that today the cellular industry is worth $46 to $80 billion. But, if it was bid in 1980 it might have been worth under $1 billion and it might not have been. At the nascent stage it would be worth very——

Mr. OXLEY. The concern I guess all of us share is that you could really—not only could you fill in your favorite spending program but you could also fill in the dollar amount, because nobody really knows what kind of revenue would be needed or could be raised. You could say we need $6.5 billion for the unemployment compensation extension so that will at least raise that. Then, somebody else comes along——

Secretary MOSBACHER. How much is the Democrat proposal of the cost?

Mr. OXLEY. I think that was a term——

Secretary MOSBACHER. What is the Dole bill?

Mr. OXLEY. The Dole is about one-half of that.

Secretary MOSBACHER. I don't have enough breadth to understand where the money should go, but let me just say that remember, whether it goes against the Dole unemployment compensation or against the democratic bill—I don't know whether anybody has put a specific name on it—it is still $3 or $6 billion that is going out. I am not saying it's wrong.

To me, what we are here to discuss is, how we are going to make this industry more effective and efficient and how we are going to get more and better services and more innovative services, and how the U.S. taxpayer and citizens are going to share in it. All of that, I should think, we could agree on.

Where it should go, how it should be allocated and how much, is something that I don't feel well enough informed to really comment on.

Mr. OXLEY. I will yield briefly to the gentleman from Pennsylvania.

Mr. RITTER. My good friend from Ohio lumped telecommunications infrastructure in with all these other things, and I think it is qualitatively different because it is kind of like the National Park Service Users Fee goes back to help fix up the parks. I think we are out-invested in telecommunications infrastructure. It makes some sense to put some revenues raised from telecommunications industry into telecommunications infrastructure.

Mr. OXLEY. I don't disagree with that. Obviously, I support that and co-sponsored the bill. However, there are competing interests, and I am sure the gentleman from Pennsylvania would agree, and those competing interests are confronting us daily. I would only caution that the unemployment compensation program is just one of a long list of potential donee's from this very worthwhile program.

I yield back the balance of my time.

Mr. MARKEY. The gentleman's time has expired. The gentleman from New Mexico, Mr. Richardson.

Mr. RICHARDSON. Thank you. Mr. Secretary, it's nice to see you. I, too, have to express some concerns with the administration's pro-

posal. I think we all agree, we want to make the system more effective or more efficient. My concern is, are we making it fair.

My interest is small, rural companies, and the possibility that they and other small start up companies would not be able to compete in the bidding game of these radio licenses. My concern is, in terms of the administration proposal, is it fair to make new users of spectrum pay while at the same time not charging existing competitors? Aren't we having one group play under old rules and a new group play under new rules?

Secretary MOSBACHER. First of all, Congressman, I think the times have changed so much. When somebody got into it, as the chairman said, ten or 15 years ago even if it had been bidding, it may have been bid at a very low price. Today, that value, whether it's $200 or $350 per population or resident in the area, at least in those parameters is pretty well fixed.

Now, that can be done either by up front payment if that's what they decide, and somewhere between 70 and 80 percent of the total value of a system now goes to that aspect of it, in other words, the population in that zone or area that is covered.

We talked about—maybe part of it before you got here—that can be either done if it's a small business by some sort of a profit sharing, some sort of a spread out payment, it can be done in my view by some sort of royalty, so that it doesn't preclude the small business or rural business person from getting into it.

It still has a value, and that value belongs to—it's just like there are many oil and gas leases as I remember in that area—it's just like if they belong to the Federal Government, the people should get the benefit. If they belong to the State, the people in the State should get the benefit. Not someone who got lucky enough in a lottery to pull it and then sells it for the difference.

Mr. RICHARDSON. I think we all agree that the current system of spectrum assignment by lottery is burdensome, it's often inaccurate in determinate qualifications. But I think we are over doing this statement that market forces are going to fix the spectrum assignment process. My concern is that were other proposals considered at the time that the auctioning off process was decided on, such as seeing if we could streamline the comparative hearing process or seeing if we could permit appeals. Might those appeals, for instance, have an impact on shortening the length of the whole process.

I mean, these are two alternatives that I have tossed out, and I wonder if these were considered?

Secretary MOSBACHER. We have talked about them and have considered them. We think that in most cases the market system, competitive bidding system, is the way to go. There will be exemptions and, of course, systems go for considerably less. We just talked about the small company approach. There should be flexibility in it.

The market should make the call, rather than some speculator.

Mr. RICHARDSON. Mr. Chairman, I have no further questions.

Mr. MARKEY. The gentleman's time has expired. The gentleman from Tennessee is not seeking recognition at this time. Let me just ask one final question, if I could, Mr. Secretary. On this whole question, if I could, of where this whole concept of competition of

competing licenses is ultimately going to produce a benefit for the country.

It seems to me that auctions only make sense in the context of when there is more than one person who wants that license. If not more than one person wants the license there is no auction, and we have to have some procedure and some process by which we put a value on it.

Secretary MOSBACHER. Sure.

Mr. MARKEY. Rephrased, mutually exclusive applications for the same license is a category which I think we can deal with, separate from other areas. For example, cellular and broadcasting are two areas where there would potentially be competition, most likely be competition although we are going to exempt broadcasting under the legislation as proposed. That just leaves cellular.

The concept then has to deal with all the other categories; that is, where there may not be mutually exclusive bids for licenses, and how we are going to handle that. For example, in aviation, taxicabs, boats, common carrier microwave, community antenna relay systems, some satellite applications. Most of these areas won't have more than one bid. There won't be an auction. It will be a straight shot, where you have to make some determination.

If you just go lottery and there's one bid in the pot, you have to take whatever they put in as their initial bid. You have to have some process by which we are going to make a determination as to whether or not we are getting full value for it or whether because we would want, for example, in a particular community we might want two taxicabs and we might want more than one airline. We have to make those determinations. I mean, one company could bid it all up. There wouldn't be long term competition in other words, you would have competition for the spectrum but then you wouldn't have any long term competition to benefit consumer long term. Another phone call that they could make, they ought to have another company provide the same service. That's a problem.

I think it's very efficient in the maximization of use for a variety of purposes for the maximum number of users. My fear is that if Dick Darman gets an emergency call saying I need another $500 million or need an extra billion, what are we going to do. Let's get that stuff out there, let's just raise the money. That's one value, and that's very correct for someone who is on Ways and Means or Senate Finance or another budget committee to think about.

That's not our job. It's part of our larger job, but our specific job in this process is to promote telecommunications technologies, competition long term. We serve as kind of the counter pole to their myopia, their job. We all have blinders on, to a certain extent. You are stipulating that you don't have the ken on some of these large decisions that have to be made.

We have our role here; you, I, the members of the subcommittee and you staff. I think our primary goal is the advancement of technology, not the generation of revenues to balance a budget that is going to be $350 billion out of whack and that both parties are going to stipulate that they are going to wink at it in perpetuity year after year. While I would like to raise that to the highest value, I have a little difficulty after 11 years in participating in it

to give it the respect which the people's names who are on that legislation continue to give it.

With that stated, what I would like to ask if whether or not you could for us under section 8 of the Telecommunications Act—it contains a list of all of the licenses and permits issued by the Commission. If you could provide for the subcommittee, your department's expectations of which amongst those would be suitable for auction; that is, which would have mutually exclusive applications and which would not.

If you could, it would help us to separate out the question in your department's mind as to whether you really do think there are going to be competing bids, which areas and which not. I think then it would help us to divide the question here in terms of how we are going to handle these various categories. That work, I think, has to be done before we can rationally begin to divvy up this very important American resource. Is that possible?

Secretary MOSBACHER. Yes, Mr. Chairman. I would be glad to do that. I agree with you, we want to make sure that there is both competitive bidding and competitive systems. Let me just say a word, in that, I think we need to move forward with this. We will try and get you that data as soon as possible. We are at your service to discuss this further any way you want, but I would urge that we move on obviously the bill that we prefer or something that is put together on this.

Thank you for having me, and I look forward to working with you.

Mr. MARKEY. We will work with you in an expeditious fashion, so that we can construct a rational——

Mr. RITTER. Would the chairman yield to me?

Mr. MARKEY. I would be glad to yield.

Mr. RITTER. I appreciate the chairman's interest, and I appreciate his insights. I think he brings up some excellent questions. Hopefully, between the Department and the subcommittee, we could move forward expeditiously. I thank the chairman.

Mr. MARKEY. Are there any other points?

[No response.]

Mr. MARKEY. Mr. Secretary, as usual, you are a class act. We really do appreciate your appearance before us.

Secretary MOSBACHER. Thank you, Mr. Chairman. It's good to be back here.

Mr. MARKEY. Thank you.

[The following responses to subcommittee questions were received:]

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

November 8, 1991

Honorable Edward J. Markey
Chairman, Subcommittee on
Telecommunications and Finance
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter containing questions following up on my testimony of October 9, 1991, on H.R. 1407, the Emergency Telecommunications Technologies Act of 1991. Enclosed, as you requested, are responses to the questions contained in that letter.

Sincerely,

Robert A. Mosbacher

Enclosure

Spectrum Questions and Responses

Question 1: I remain interested in obtaining the list of all of the licenses and permits issued by the Commission and which of those would be suitable for auction according to your Department's expectations. As you may remember, I had requested that list toward the end of your testimony.

Answer:

Attached is a list of radio services, derived from that appearing in Section 8 of the Communications Act, for which the Federal Communications Commission (FCC) now charges fees. Under the terms of H.R. 1407, the FCC would have jurisdiction to use competitive bidding in the assignment of licenses in any service not specifically exempted.

As a practical matter, competitive bidding could operate when there are mutually exclusive applications for a license, and would be most likely to operate in those services for which the FCC now uses lotteries or comparative hearings to assign licenses. The attached list notes the services in which mutually exclusive applications might occur. However, mutually exclusive license applications may not routinely occur in some of these services. For example, some fixed microwave licenses are assigned for specific routes and frequencies that other applicants rarely would request. In such cases, competitive bidding, even if authorized, might seldom be used.

In services such as cellular, the Specialized Mobile Radio Service (SMRS), and broadcasting, mutually exclusive license applications routinely occur, thus making these services likely candidates for competitive bidding. As new radio services develop that can be provided competitively, such as personal communications services and advanced mobile aeronautical and mobile satellite services, competitive bidding could well apply.

(See attached chart on FCC license assignment process)

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Question 2: As currently drafted, H.R. 1407 would exempt private radio end-user licenses, such as SMRS, from the competitive bidding process. Cellular telephone systems would be subject to that process. Can you explain why, despite the fact that the functions of these two services increasingly overlap, cellular systems would be subject to the financial burden of the bidding process and not SMRS?

Answer:

The intent of H.R. 1407 is to treat similarly the licensed operators of cellular telephone systems and SMRS systems. Thus, licenses held by the operators of both cellular radio and SMRS systems would likely to be subject to competitive bidding. Cellular end users do not hold FCC licenses, so by definition they would not be subject to competitive bidding. SMRS end users, unlike cellular radio end users, hold licenses for associated control points, control stations and mobile radio stations (See 47 CFR § 90.655). H.R. 1407 would exempt from competitive bidding such licenses for SMRS end users, and similar private radio end-user licenses.

Question 3: The present language in H.R. 1407 includes exemption for "private radio end-user licenses." Is there a distinction between private radio end-user licenses and private radio licensees? If there is a distinction, does it minimize the competitive disadvantage that confronts cellular telephone systems vis-a-vis private radio services regarding the competitive bidding scheme?

Answer:

The bill distinguishes between the operators of private radio systems (some of which may offer their services to unaffiliated end users) and those end users that obtain service from such system operators but are required by the FCC to hold licenses to do so. The bill exempts from competitive bidding such private radio end users. As noted in the response to Question 2, this would result in such end users being treated identically to cellular users under H.R. 1407. SMRS end users are identified as an example. However, many other private radio system operators are licensed to provide service for their own needs. They would not automatically be exempt on the basis that they are also "end users" of the service.

POSSIBLE APPLICABILITY OF COMPETITIVE BIDDING TO PARTICULAR RADIO SERVICES

Radio Services (List from Section 8 of the Communications Act of 1934)[1]	Mutually Exclusive License Applications?[2]	Exempted from Competitive Bidding Under H.R. 1407[3]
PRIVATE RADIO SERVICES		
1. Marine Coast Stations (Part 80)	Possible, but not routine (Lottery)[4]	
2. Ship Stations (Part 80)	No	Maritime End Users
3. Operational Fixed Microwave Stations (Part 94)	Yes (Lottery)	
4. Aviation (Ground Stations) (Part 87)	Yes (Lottery)	
5. Aircraft Stations (Part 87)	No	Aviation End Users
6. Land Mobile Radio Stations (including Special Emergency and Public Safety Stations) (Part 90)	Possible, but not routine	Public Safety Services; Land Mobile End Users

1/ Radio services indicated are those appearing in Section 8(g) of the Communications Act [47 U.S.C. §158(g)], which sets processing fees for various activities. Listings in Section 8(g) not related to radio services are omitted, although we retain the original numbering. References to Part Numbers are to FCC rules, contained in Title 47 of the Code of Federal Regulations (47 CFR). The nomenclature used in Section 8(g) is not always identical to that used in the FCC rules.

2/ Mutually exclusive license applications are those for which a grant to one applicant would deny a grant to a competing applicant. In some cases, such as when there is only one applicant for a license, the FCC will not need to conduct a comparative hearing or lottery, even where authorized. The list attempts to distinguish among services in which mutually exclusive applications often occur, those in which such applications do not routinely occur, and those in which mutually exclusive applications cannot occur under existing FCC rules. Entries in this column were derived from examination of the FCC rules and, in some cases, consultations with FCC staff members.

3/ In addition, H.R. 1407 exempts U.S. and state government licensees and all license renewals, and also permits the FCC to exempt additional license assignments from competitive bidding pursuant to a public rulemaking.

4/ For a listing of services that may be subject to lottery, see 47 CFR § 1.1601 (mass media); 47 CFR § 1.821 (common carrier); and 47 CFR § 1.972 (private radio). Please note, however, that competing applicants may avoid the comparative process (either hearing or lottery) if they reach a settlement, and the settlement is approved by the FCC.

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Radio Services (List from Section 8 of the Communications Act of 1934)	Mutually Exclusive License Applications?	Exempted from Competitive Bidding Under H.R. 1407
6. Specialized Mobile Radio Systems-Base Stations (Part 90)	Yes (Lottery)	End Users
7. General Mobile Radio Service (Personal Radio Service, Part 95)	No (Frequency Sharing)	
MASS MEDIA SERVICES		
1. Commercial TV Stations (Part 73)	Yes (Comparative Hearing)	(Non-commercial broadcasting exempt)
2. Commercial Radio Stations (Part 73)	Yes (Comparative Hearing)	(Non-commercial broadcasting exempt)
3. FM Translators (Part 74)	Possible, but not routine (Comparative Hearing)	
4. TV Translators and LPTV Stations (Part 74)	Yes (Lottery)	
5. Auxiliary Services (Part 74)	Possible, but not routine (Comparative Hearing)	
6. FM/TV Boosters (Part 74)	Possible, but not routine (Comparative Hearing)	
7. International Broadcast Station (Shortwave to foreign points, Part 73)	No[5/]	
8. Cable Television Service (Part 76)[6/]	(See below and at note 6)	

5/ Frequencies for such use are assigned subject to coordination procedures.

6/ Cable television is not itself a radio service, but uses some radio links, as reflected by the Cable Television Relay Service category below.

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Radio Services (List from Section 8 of the Communications Act of 1934)	Mutually Exclusive License Applications?	Exempted from Competitive Bidding Under H.R. 1407
a. Cable Television Relay Service [Part 78]	Possible, but not routine (Comparative Hearing)[6]	
9. Direct Broadcast Satellite [Part 100]	Yes[9]	
COMMON CARRIER SERVICES		
1. All Common Carrier Services[9]	[See Individual Services]	
2. Domestic Public Land Mobile Stations (includes Base, Dispatch, Control & Repeater Stations) [Includes local paging, Part 22]	Yes (Lottery)	
q. 900 MHz Nationwide Paging [Part 22]	Yes (Comparative Hearing)	
r. Air-Ground Individual License [800 MHz, Part 22]	No[10]	
3. Cellular Systems[11] [Part 22]	Yes (Lottery)[12]	
4. Rural Radio (includes Central Office, Interoffice, or Relay Facilities) [Part 22]	Possible, but not routine (Comparative Hearing)	

7/ See 47 CFR § 1.973.

8/ See 47 CFR § 100.13.

9/ "Common Carrier" is not itself a "radio service." We discuss individual radio-based common carrier services in the succeeding listings.

10/ This service is characterized by an open entry, spectrum sharing policy. See 47 CFR § 22.31(N).

11/ Cellular system operators are licensed. Cellular end users are not licensed.

12/ See 47 CFR § 22.31, 22.33.

Radio Services (List from Section 8 of the Communications Act of 1934)	Mutually Exclusive License Applications?	Exempted from Competitive Bidding Under H.R. 1407
5. Offshore Radio Service (Mobile Subscriber and Central Stations) (Part 22)	Possible, but not routine (Comparative Hearing)	
6. Point-to-Point Microwave and Local Television Radio Service (Part 21)	Possible, but not routine (Comparative Hearing)[13/]	
7. Multipoint Distribution Service (including multichannel MDS) (Part 21)	Yes (Lottery)	
8. Digital Electronic Message Service (Part 21)	Yes (Lottery)	
9. International Fixed Public Radio (Public and Control Stations) (Radiotelephone and Radiotelegraph, Part 23)	Possible, but not routine (Comparative Hearing)	
10. Fixed Satellite Transmit/Receive Earth Stations (Part 25)	Possible, but not routine (First come, first served)	
11. Small Transmit/Receive Earth Stations (Part 25)	Possible, but not routine (First come, first served)	
12. Receive Only Earth Stations[14/] (Part 25)	Possible, but not routine (First come, first served)	
13. Very Small Aperture Terminal (VSAT) Systems (Part 25)	Possible, but not routine (First come, first served)	

13/ Generally, because technical specifications can often be used as a means to grant each applicant an assignment, this service is not typically subject to the comparative process.

14/ A license is no longer required for Receive Only Earth Stations, but one may be sought, in which case it would be granted on the basis indicated.

Radio Services (List from Section 8 of the Communications Act of 1934)	Mutually Exclusive License Applications?	Exempted from Competitive Bidding Under H.R. 1407
14. Mobile Satellite Earth Stations (Part 25)	To be determined by the FCC for future grants	
15. Radio Determination Satellite Earth Stations (Part 25)	Possible, but not routine (First come, first served)	
16. Space Stations[15/] (Part 25)	To be determined by the FCC for future grants	
Amateur Stations and Operators[16/]	No (Frequency Sharing)	Yes

15/ Subcategories in this service were identified by the FCC as Mobile Satellite Service, Fixed Satellite Service, and Radio Determination Satellite Service.

16/ The Amateur Service is not included on the fee list contained in Section 8(g) of the Communications Act.

Mr. MARKEY. The next set of witnesses consist of Robert Clemons who is the Manager of Bledsoe Telephone Cooperative from Pikeville, Tenn., representing the National Telephone Cooperative Association; Mr. Robert Powers, Chairman of the Committee on Communications and Information Policy, representing the Institute of Electrical and Electronics Engineers; Mr. Lawrence Rick, Elmont Fire Department, Elmont N.Y., representing Associated Public Safety Communications Officers; Mr. James Davidson, Chairman of the National Taxpayers' Union.

Each of them are very distinguished witnesses. What I would like to do is to have each of you, if you could, to keep your opening statements to 5 minutes or less. Then, we will get to a question and answer period.

Mr. Davidson, why don't we begin with you, if you could open. Again, please keep your opening statement to 5 minutes.

STATEMENTS OF JAMES DALE DAVIDSON, CHAIRMAN, NATIONAL TAXPAYERS UNION; LAWRENCE RICK, ELMONT FIRE DISTRICT, AND ON BEHALF OF ASSOCIATED PUBLIC-SAFETY COMMUNICATIONS OFFICERS; ROBERT S. POWERS, CHAIRMAN, COMMITTEE ON COMMUNICATIONS AND INFORMATION POLICY, INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS; AND ROBERT CLEMONS, MANAGER, BLEDSOE TELEPHONE COOPERATIVE, ON BEHALF OF THE NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

Mr. DAVIDSON. Thank you, Mr. Chairman. I appreciate the opportunity to present the perspective of the National Taxpayers' Union which is a non-partisan, non-profit public interest group with over 200,000 members, on the issue of spectrum allocation.

I believe that when I say we speak for 200,00 dues paying members that we are grossly underestimating the constituency that we have, with many hundreds of thousands of members and affiliated organizations around the United States and I believe many, many millions of taxpayers who feel that they are not getting their money's worth in Washington.

Currently, Mr. Chairman, 39.1 percent of all Federal revenues are absorbed by statutory interest payments on the national debt. To my mind, this is a tremendous burden that is placed on our economy, on small entrepreneurs or bid entrepreneurs, on ordinary households, by the need to service these overdue bills. This tremendous debt has been caused by years of fiscal mismanagement of our Federal budget, and I believe that the first priority of this committee and the entire Congress should be to restore order to Federal finances and to protect the sound credit of the United States.

Yet, we have evidence even in this morning's testimony, that may Members of Congress do not take the deteriorating fiscal condition of this country to be a serious problem. I thank the chairman for his frankness is saying that he has difficulty giving it the respect that it might deserve after 11 years of winking at the growth of these huge deficits.

I see us sitting here today with a huge deficit growing larger, with the Nation in serious economic trouble, and the principal concern of the committee seems to be how to maintain subsidies and

provide benefits to special groups that have been profiting by utilizing the resource that belongs to the whole public without paying for it.

Today, we have an utterly ridiculous system of lottery allocation which gives away tens of billions of dollars worth of assets, which are then sold outside the public lottery system, and no benefits come to the Treasury. I say this as somebody who inadvertently actually won one of these lottery's. It was a completely ridiculous thing, and I wasn't even aware that I was an applicant in it because I bought a company that had applied for this type of thing and won one of the lottery programs.

It was a valuable asset, a complete windfall, and a stupid, stupid system. I say that as somebody who benefitted from it. I think that it is a crying shame that this country, running huge deficits where we have to tax people and put people out of business, we put in this so-called luxury tax which has destroyed the boat industry in this country and put lots of people out of business, ruined people's lives in order to raise a few dollars which, in fact, did not come in. In the meantime, the Federal Government is sitting on this vast asset of the spectrum which it is giving away, and we are still concerned about how we can protect the broadcasters and other special interests rather than worry about protecting the interest of the citizen and the Treasury of this country.

I put it to you that we support this bill that would authorize allocation of the spectrum according to the market process, to give value back to the Treasury so we stop subsidizing special interests and put money back in the pocket of this country, which is in desperate trouble.

My advice, if I am offered the opportunity to provide it to Mr. Ritter who has done so much to push forward this sensible reform, is not to put into your bill a provision to allocate this money back as a slush fund for the telecommunications industry but put it where it belongs, in the Treasury of this country to pay off this huge deficit, which all of you gentlemen have put on our futures and our grandchildren's futures where today, the person who graduated from high school last June is going to have to pay $120,000 of additional taxes in his or her lifetime just to pay the interest on the national debt that exists now.

If you don't think that is the priority, I think you guys have got things mixed up. Thank you.

[The prepared statement of Mr. Davidson follows:]

Statement by James Dale Davidson
Chairman, National Taxpayers Union
Submitted to the Subcommittee on Telecommunications and Finance
of the U.S. House of Representatives
on
H.R. 1407, the "Emerging Telecommunications Technologies Act of 1991"

Mr Chairman, thank you for allowing me to represent the perspective of the National Taxpayers Union, a non-partisan, non-profit public interest group with over 200,000 thousand members, on the issue of spectrum allocation.

Mr. Chairman, currently 39.1% of all federal receipts are absorbed by statutory interest payments on the national debt. This is a tremendous burden placed on our economy by an overdue bill. A bill caused by years of egregious mismanagement of our federal budget. Our first priority must be to restore order to our finances and to protect the sound credit of the United States Treasury.

Yet, we have evidence that many Members of Congress do not take the deteriorating fiscal condition of the country to be a serious problem.

In spite of several pledges to the contrary, the Gramm-Rudman-Hollings Budget Act is amended again and again. This, in light of fact that

the Federal deficit appears to be on a trajectory to hit $400 billion dollars or more. Under these conditions, Mr. Chairman, it is utterly ridiculous for the Federal government to be giving away tens of billions in assets through a lottery program. The effect of which, is to make a few lucky winners rich without providing any benefits to the Treasury. No one who understands how this process works should argue for its continuation - except for the paper manufacturers who benefit from the sale of millions of sheets of paper processed and stored by the federal government. It is no secret that winners of lotteries tend to end up selling them in private auctions. This system is ridiculous and must be changed.

One hundred years ago the value of the entire radio spectrum was zero and could have been bought, provided the government would sell it, for virtually nothing. Which, incidentally, is basically what they are getting now. As the need for radio spectrum grew, so did the value of the resource. Now the federal government is giving away the rights to a resource worth tens of billions of dollars. Unfortunately, few Members of Congress seem to recognize this problem. I applaud Congressmen Oxley, Ritter and Tauzin for recognizing the problem and acting responsibly to rectify it. The biggest reason for our support of this bill is that it will offset the need to raise taxes and help to offset the tens of billions of dollars in debt that has not been retired. Their bill, H.R. 1407 will address this issue in a manner which will secure the gains of the sale of spectrum

while protecting smaller investors and the public interest in safety. The importance of this bill lies as much in its practicality as in its philosophy and I would like to address both of these aspects.

The first and most obvious practical benefit of this legislation will be the institution of a process whereby the taxpayer, through the federal government, will enjoy some of the benefits of the sale of these spectrum licenses. As you know, the overwhelming majority of spectrum licenses are distributed by a lottery system, for free. This is an incredibly good deal considering the fact that just the 50 megahertz of spectrum dedicated to cellular phone transmission is, by the most conservative estimates, valued at over $45 billion dollars and is more realistically valued at over $80 billion. What makes this system such a farce is that the winners of this lottery need not have any intention of using their freely won license. In fact, many of these licenses are privately auctioned by the winner, to individuals and companies willing to pay millions of dollars for the rights to a license originally acquired for nothing. Nice work if you can get it. Now, please do not misunderstand me. I, of all people, am fully in favor of profiting through the use of the free market system. However, I believe that the government should avail itself of the market value of a resource it essentially owns. Spectrum auctions are a reality. There is no debate on this point. The question is; should the government be the be on the receiving end of the auction profits or simply the provider of the resource? It seems to me that in these

times of burgeoning deficits and budgetary belt tightening the Congress would be searching high and low for some hidden source of capital. Well, gentlemen, this is it. While I would hope that any excess money found in our budget would be dedicated to retiring our enormous deficit, one cannot ignore the fact that this untapped pool of resources could fund a good many federal programs. At least the money would be going into the coffers of the federal government as opposed to a few lucky millionaires.

Radio spectrum, like oil and gas, is a resource, a commodity that the federal government basically owns. The value of the spectrum currently being used by television and radio is tremendous. It is hard to imagine life in today's world without television which, not withstanding its sometimes stupefying effects, has the ability to instantaneously bring events occurring half a world away into our living rooms. Likewise, the value of the 200 megahertz currently under consideration is not easily ascertained. In fact, a substantial portion of this spectrum may not be immediately useful. But, like oil, which was at one time considered a nuisance, the extra spectrum will become increasingly valuable as new technologies are developed to make use of it.

The history of oil as a commodity is a particularly useful analogy when discussing the value of radio spectrum. Oil went from being a nuisance substance to being arguably the most highly valued resource on the planet. Without oil the industrial revolution and most of the

developments made during the 20th century would have been impossible. The value of oil increased exponentially as the world came to rely on it more and more heavily. In my estimation, that same sort of value increase will occur with radio spectrum. Just as the world depended on oil to fuel the post-industrial age, so will the world come to rely on radio spectrum to communicate in the information age and its value will grow accordingly. Fortunately, radio spectrum does not suffer, as oil does, from the Achilles heel of being a finite resource. Its use is limited only by technological development and government interference.

Another practical benefit of government auctions would be the simplification of the whole spectrum distribution process. As it stands now, the FCC receives tens of thousands of applications for each spectrum lottery it holds. The administrative costs alone of managing this application process must be staggering. The sheer volume of paper that must be stored boggles the mind. From an environmental standpoint this process is a nightmare. I am sure more than one spotted owl summer home is filed away somewhere in the bowels of the FCC. By instituting a competitive auction the entire process could be streamlined, eliminating the need for such costly administration and waste. Auctions also ensure that only serious investors apply for spectrum licenses, eliminating speculators and application mills.

From a philosophical standpoint this legislation will correct a policy that is contrary to the nature of our free enterprise system. Eastern Europe is now in the process of clawing its way out of the deadening inertia of a command economy. The economic malaise that those countries suffered was instituted by governments which controlled the price and availability of practically all goods. The United States is involved, and rightfully so, in the process of reeducating those countries in the ways of capitalism and the free market. And yet we practice at home, in the case of radio spectrum, precisely the same policies which kept those countries out of the world market for over seventy years. By allowing politicians and bureaucrats to dictate which spectrum can be used and which cannot, instead of the market, we doom our high tech industries to competing with each other with yesterdays tools. We must enable market forces to provide the development incentive our high technology companies have used to stay on top in the global economy. The legislation under consideration would provide incentives for industry pioneers to make use of unused spectrum. Thereby pushing the boundaries of technological development.

Mr Chairman, I urge you and your committee to approve this thoughtful legislation and act to expedite its passage by the entire Congress. I am certain that the concerns voiced by opponents of this legislation can easily be addressed while not detracting from its major goal. The only losers under this legislation will be those who run the application mills that profit from the current system. It does not make good economic or political sense to continue depriving the federal government of profits on the sale of its own goods. But, perhaps worse, it is unconscionable to limit the competitiveness of our high tech companies through short-sighted policy and fritter away assets which could ease the burden of taxation. This is a demonstrably stupid system and it is time to bring it to an end.

This concludes my statement. I would be happy to answer any questions.

Mr. MARKEY. The gentleman's time has expired. The next witness is Mr. Lawrence Rick, who is here from the Elmont Fire Department, Elmont, N.Y. He is representing the Associated Public Safety Communications Officers, Incorporated. Welcome, Mr. Rick. Whenever you feel comfortable, please begin.

STATEMENT OF LAWRENCE RICK

Mr. RICK. Mr. Chairman and members of the committee, I am Lawrence Rick of the Elmont Fire Protection District in Nassau Country, N.Y. I am here to offer my views in opposition to H.R. 1407, the Emerging Telecommunications Technologies Act of 1991.

The Elmont Fire District is a fire district covering about ten square miles in the northeast section of the town of Hempstead, N.Y. The district is bordered by New York City and includes major New York City commuter routes, accounting for a high percentage of ambulance and fire activity. I am intimately familiar with the vital importance of up-to-date and adequate radio communications for a public emergency response operation.

With the public safety frequency congestion problems of our major metropolitan area, that being New York, and with the extremely critical lack of financial resources facing local governments, I am here to join with the Associated Public-Safety Communications Officers [APCO] in opposing H.R. 1407. If H.R. 1407 were to become law, it would adversely affect public safety communications in two major respects.

First, it would not ensure that public safety will receive spectrum, whereas H.R. 531 would. Second, H.R. 1407 would require auctioning of the spectrum to be transferred from the Federal to the non-Federal sector. Auctioning spectrum would be equivalent to denying spectrum to public safety operations.

H.R. 1407 does not, number one, recognize the Congressional directive that the Federal Communications Commission must regard State and local government public safety spectrum needs as its number one priority.

Two, recognize the problems with which State and local governments are faced today in their need for additional spectrum to ease the frequency congestion which is choking our public safety communications operations.

Three, make findings that the safety of life and property is seriously threatened by the shortage of radio spectrum currently available to State and local government public safety agencies.

Number four, offer any assurance that the spectrum needs of State and local governments would even be considered, as spectrum is thus transferred from the Federal Government agencies to the non-Federal sector.

Five, provide for any State and local government public safety representation in the process of identifying and reallocating any spectrum to be released.

Those of us in local government charged by law with the responsibility of protecting the lives and property of our citizens know the importance of adequate radio communications in carrying out that responsibility. We applauded the work of this committee for adopting the constructive changes recommended by the Associated

Public Safety Communications Officers and Fire and Law Enforcement Representatives that are now embodied in H.R. 531.

That legislation makes findings that the safety of life and property is threatened to date by the lack of radio spectrum. It expressly includes public safety representatives as participants in the process of identifying and reallocating spectrum to be released by the Federal Government. It does not include any auction provisions to stimulate high dollar investors as the expense of tax poor local governments.

In contrast, H.R. 1407 lacks any provisions to ensure or even encourage that spectrum released from the Federal Government is reallocated to public safety. H.R. 1407 contains no language dealing with the concerns of the public safety services as raised by the public safety witnesses in the past 2 years. During this period, a parade of impressive witnesses from the public safety community in spectrum starved areas of the United States has come before both House and Senate committees on this spectrum legislation pleading for Congressional assistance. Proponents of H.R. 531 responded well.

The availability of an auction approach would give the FCC an incentive to allocate more spectrum to commercial services to raise revenue and less to public safety when no revenue could be raised. At least a partial cure for the weakness in H.R. 1407 would be to identify public safety requirements, both before and during this Federal spectrum transfer process and satisfy them off the top of the spectrum to be reallocated, outside any auction process. It is not enough to give the FCC the discretion in the future.

Congress has specifically directed the Commission to accommodate public safety spectrum needs of State and local government agencies above other uses of the spectrum. Congress has been no more successful in its directives than the public safety community itself has been in its public interest pleadings to the Commission. H.R. 531 would help change that. H.R. 1407 would not.

I would like to localize the public safety communications situation to the New York Metropolitan area for a moment. As in many other metro areas, there is not a single public safety radio channel available today for Elmont as well as anybody else to use, to remedy serious communication problems we have. In total, the public safety agencies in our area have identified immediate requirements for more than 200 additional radio channels. Elmont is asking for one of those channels in a major area plan, now being prepared for filing with the FCC.

In addition to serving major traffic areas in New York City mertioned above, the Elmont Fire District is responsible for protection of the Belmont Race Track, Franklin General Hospital, nine public elementary and high schools and various private schools, and has responsibility to surrounding Nassau County communities as well as New York City. Kennedy Airport is directly Southwest of the Fire District. This puts the district under the approach of a runway that handles up to 300 flights per day.

The district answers an average of 2,300 calls per year, fire and rescue. During the last 10 years the proliferation of radio users and radio systems has created communications problems for our district. To alleviate these, the district installed a low powered UHF

system for fire ground operation. This system temporarily solved our problem. The system is now subject to interference from other users. When they use their system, the other users, communications in Elmont is degraded substantially.

Our current radio system for dispatch operation also consists of two low band channels, one channel for firefighting alerting and the other channel for dispatching. The fire district has interference and reliability problems with this system. Low band radios do not communicate well in and out of buildings when portables are used. The same frequencies are also used by many public safety departments on Long Island and by departments in Upstate New York, rural New Jersey, Pennsylvania and New England.

It is not unusual, as a matter of fact it's common, for out of State and foreign radio transmissions to interfere with normal dispatch operations. I have personally heard Portuguese fishing boats come and go by the fire radio.

The one additional channel we are requesting will provide relief to Elmont and will also provide some relief to the other public safety people using the crowded low band channels. The public safety community in our area is using every scrap of spectrum available to it, and we are operating on a crisis basis. It is hard for us to understand why people in Washington can't or won't appreciate our spectrum poverty and do something to relieve it.

We need the future relief promised by H.R. 531. We need more immediate relief. One of the FCC's current projects is to give every television station in the country another six megahertz of spectrum, double its present allocation, to switch to high definition TV operation over an extended period of years.

The New York metro area public safety operations combined are asking use of only one of those TV channels on a very limited, low power, small area coverage basis to help us inch out of our spectrum poverty. This could open up 120 radio channels for public safety use, one TV channel.

Thank you, on behalf of APCO and all the State and local government public safety operations in the country, for allowing me to present our position today. What you do today affects the life and death of our citizens. Thank you.

Mr. COOPER [presiding]. The next witness will be Mr. Robert Powers, Chairman of the Committee on Communication and Information Policy of the Institute of Electrical and Electronics Engineers.

STATEMENT OF ROBERT S. POWERS

Mr. POWERS. Thank you, Mr. Chairman. I am happy to present the views of IEEE USA, today. I am employed by MCI Telecommunications, Incorporated, but my remarks represent only the views of IEEE USA, not those of MCI. I would like to ask that my formal statement be put in the record, and try to address my oral statement more to the issues that we have heard about today. I might remark that these are not made up remarks of mine, what I say comes from conversations that we have had in our IEEE committee.

Being trained as a scientist, as Mr. Ritter is trained as an engineer, I like very much the idea of writing down your basic premise that you agree on and understand, and then see what follows from that. The thing that I would write large, in 12 foot letters here is, that we put the public interest issues in one bucket and address those by human beings at the Federal Communications Commission. Then, put things that don't matter to the public interest so much like the sale of a given license once it's decided what that license is supposed to be, in another bucket.

Once that is done, I think many of the things that I am so delighted to hear the chairman and Mr. Mosbacher agreeing that they think they can work out—I think we made some real progress if we can do that.

The major points that IEEE would like to make here are really the following: The discussion is not about a completely open marketplace for spectrum, it's about licenses; we recognize that a bidding process for licenses already exists and does not operate in the best public interest; that comparative hearings for licenses are so slow and add so little value that we in practice cannot go home again to that approach; recognize that a carefully defined bidding process can in fact remedy the major shortcomings of the existing bidding process.

As to entrepreneurs that have been discussed this morning, I think from our basic premise that you separate the public interest decisions from the auctioning of licenses takes care of that. FCC has the right and the responsibility to impose the public interest first when it sees that entrepreneurs need spectrum for things, or for that matter as has just been mentioned, public safety agencies.

As to existing licensees, I would remark there has been a great deal of discussion this morning about existing licensees versus new licensees. I would remark that many of the existing licensees have, in fact, paid the market price. It doesn't take very many readings of the Wall Street Journal to see another instance of a broadcaster paying $500 million for an FCC license.

As to our first major point, that we are not at all talking about auctioning off the spectrum itself to be used for whatever purpose the purchaser wants, H.R. 1407 does not propose this nor does any other bill of which we are aware. But some have taken the proposals to mean just that. Let me emphasize that point, in terms of one essential marketplace characteristic, recognizing that I am not an economist nor are most of my colleagues at IEEE USA.

We do understand that a realistic marketplace requires that there must be a well-defined product to be bought and sold, a loaf of bread or whatever. The radio frequency spectrum, as such, just doesn't qualify as a saleable product. A product such as land, for example, can be described pretty simply, just using latitude and longitude. Spectrum has something like eight dimensions; three dimensions of space, basic frequency, band width, time of use, power level, modulation technique. That is just too complicated for a marketplace to deal with, aside from the public interest issues that we have talked about, until the FCC has packaged that spectrum in the form of a license, and then you have a marketable product.

As to the existing bidding and lottery process, the condition that permitted the lotteries was this—back to the main point—the Com-

mission retained responsibility for the public interest decisions associated with the spectrum in the license. Only after those decisions were made could the choice of licensees be delegated to the ping pong balls and, of course, the secondary market that developed.

I happen to have been at FCC—a personal comment—at the time that the cellular spectrum was designated for that purpose. I must have to guess, having helped with that process, that if spectrum auctioning had been in place at the time the FCC would not have auctioned the spectrum for any purpose or just made arbitrarily licensing. It would have done exactly what it did in terms of saying yes, cellular is a good thing and we are going to allocate this much spectrum for it, we are going to have two licensees in each city. Now, we would have sold those licenses at auction rather than done them by lottery. The public interest decision would have been the same, I maintain.

What is wrong with the auctioning that might be fixable? The process is disorderly, is a point that I think we have discussed. So that, some reasonable possibilities, business possibilities, are virtually excluded. For example, imagine somebody wanting to assemble some kind of license to serve Southern California. It could well be impossible to collect those licenses by dealing with the lucky lottery winners. But, given FCC approval for the process, one could reasonably hope to gather that set of licenses to serve Southern California through that competitive bidding process. The bidding would be at a single location, bids on the table at the same time, lending some order to what we now have as a very disorderly marketplace.

Second, of course as we mentioned so many times this morning, the public owns the spectrum and it pays through the FCC for the spectrum management which gives that spectrum its practical value. It has no practical value until somebody puts some order to it. But then, the public gets no return for its investment through FCC of putting that order to the process.

The process also wastes private resources if say 2,000 people pay $1,000 a piece to make applications for a license, that's $4 million that doesn't do anybody any good. Now, I recognize that the marketplace has driven the price of those applications down by quite a bit. Still, the point is valid, there is a lot of wasted private money going into those auctions which don't do the public any good, certainly don't do the lottery losers any good. The lucky lottery winner, of course, is delighted.

The last major point, that a carefully designed competitive bidding process can overcome these disadvantages, follows almost automatically. It would be more orderly than what we have now, it would provide the badly needed public funds, and it would eliminate much of the presently wasted effort that goes into the lottery process.

Our written discussion lists one-half dozen features that we feel are essential to a successful bidding process. Let me stress here just one. It is very important to the public interest that the FCC must be able to decline to use competitive bidding in those selective instances. Back to the first point, separate the public interest from

the sale of a license, even beyond those specific instances listed in the bill.

We believe that the ability to decline auction will relieve those legitimate concerns about whether auctions will disadvantage small business or other particular users.

Finally, as to another point that has been discussed so often today, we suggest that the Congress should consider using funds raised by the auction process or the bidding process to improve our overall spectrum management, including compensating licensees for expenses incurred in freeing the spectrum up for new uses. I would emphasize, we don't suggest even let alone insist, that the Congress label these funds for that purpose but consider using them for that purpose. If they are labeled—we had this discussion at one of our meetings not too long ago. Any time these funds are labeled for some particular purpose, that risks that labeling being out of date tomorrow.

We appreciate very much the opportunity to support this concept and the thoughtful practice of competitive bidding for FCC radio licenses. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Powers follows:]

TESTIMONY OF

ROBERT S. POWERS

CHAIR, COMMITTEE ON COMMUNICATIONS AND INFORMATION POLICY

THE INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS, INC. -
UNITED STATES ACTIVITIES

Before the

SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE

ENERGY AND COMMERCE COMMITTEE

U.S. HOUSE OF REPRESENTATIVES

Considering

H. R. 1407 -- THE EMERGING TELECOMMUNICATIONS
TECHNOLOGIES ACT OF 1991

October 9, 1991

My name is Robert Powers, and I am happy to present the views of IEEE-USA on H.R. 1407. I am employed by MCI Telecommunications, Inc., but my remarks here represent only the views of IEEE-USA, not those of MCI.

IEEE is the world's largest technical professional organization, with more than 320,000 electrical, electronics and computer engineers in over 130 countries. IEEE-USA promotes career and technology policy interests of close to 250,000 U.S. IEEE members. The Institute is a leading authority in areas ranging from aerospace, computers, and communications to biomedical technology, electric power, and consumer electronics. The Committee on Communications and Information Policy addresses policy issues relating to the broad scope of communications services and develops recommendations on these issues.

The principal feature of H.R. 1407 we are to address today is whether to permit competitive bidding for radio license privileges granted by the Federal Communications Commisssion. Our three major arguments, which favor and we hope help to define a good competitive bidding process, are the following:

(1) The discussion is NOT about a completely open marketplace for spectrum;

(2) A bidding process already exists, but does not operate in the best public interest; and

(3) A carefully defined bidding system can remedy the major shortcomings of the existing process.

To the first point: We are NOT AT ALL talking about auctioning off the spectrum itself, to be used for whatever purpose the purchaser wants. That is not feasible. H.R. 1407 doesn't propose it; nor does any other bill of which we are aware. But some have taken the proposals to mean just that. Let me emphasize the point in terms of essential marketplace characteristics. I am not an economist, nor are most of my colleagues in IEEE-USA. But I do understand that a realistic marketplace requires that there must be a well defined product to be bought and sold.

The radio frequency spectrum, as such, just doesn't qualify as a "well defined product." A "product" such as land can be described simply, using just two dimensions -- lattitude and longitude. But in practice, the spectrum has something like eight dimensions -- three dimensions of space, base frequency, bandwidth, time of use, power level, and modulation technique. That's too complex for the marketplace to deal with until the FCC has packaged that spectrum in the form of a license, which is a marketable product.

As to the existing bidding process: This Subcommittee well knows, the FCC found itself a few years ago buried under its traditional comparative hearing process. With that procedure, the FCC had not only to decide that applicants met some basic qualifications for holding and executing the license; it also had to pick the "best" of the applicants, in some public interest sense. The Commission and the applicants found that the comparative hearing process was too long, and the value that it produced was not commensurate with its costs and time spent.

So the Commission, with Congressional approval, moved to a lottery process. The important condition that made the lottery feasible at all was this--that the Commission retained responsibility for overall spectrum management and for specifying the nature of the license, the term of the license period, the required qualifications of the licensee, and the conditions under which the license could be revoked by the Commission. Then it could be fairly said that the reduced time for license issuance was worth more than the presumed value of making the "best" choice among qualified applicants through the hearing process. So, go with a lottery.

But then the market reared its head. The Lucky Lottery Winner held an asset which had an economic value; there were willing buyers and sellers; so a market for those licenses soon developed. And since the license was awarded virtually free to the Lucky Lottery Winner, the number of applicants for licenses skyrocketed.

I won't review here the data on resale of licenses that has previously been cited by Representative Ritter, by the National Telecommunications and Information Administration, and perhaps others. I will only note that in the face of rewards of tens of millions of dollars, in the form of license sales within months of winning the lottery, why should we be surprised that (a) the number of applicants for certain kinds of licenses (e.g. cellular telephony) can run in the thousands, (b) most of those applicants have no intention of actually executing the terms of the licenses themselves, and (c) often the licenses are sold to and executed by parties not chosen by the FCC.

So what? Why should we care if there is a marketplace for FCC license resales? How does such a marketplace harm the public interest? We suggest several harmful aspects, and suggest how competitive bidding can help fix the problems:

1. The process is disorderly, so that some reasonable possibilities are virtually excluded. For example, imagine that someone wanted to assemble licenses to serve southern California. It could well be impossible to collect those licenses by dealing with the Lucky Lottery Winners. But, given FCC approval, one could reasonably hope to do so through competitive bidding. That bidding will occur at a single location, with all competing bids on the table at the same time.

2. The public -- the "owner" of the radio frequency spectrum -- gets no direct return for the asset it has provided to the Lucky Lottery Winner and subsequent buyers of the license. But the public does have to pay the costs of creating that valuable asset. It pays the costs the FCC must invest in the original spectrum allocation, in designing the service to be licensed, in making the specific frequency assignments within the allocation, in reviewing the Lucky Lottery Winners and subsequent buyers for their qualifications, in issuing the licenses, in monitoring the performance of licensees over the lifetimes of the licenses, and then issuing license renewals.

3. The process also wastes private resources. Applications cost little in terms of the final value of the license. But, if, say 2,000 applicants spend $2,000 each to enter the lottery, that's $4 million -- on just one license -- that is wasted on paper applications. The Lucky Lottery Winner is delighted, but what do the public, the nation's economy, and the Lottery Losers, get for that $4 million?

Now the third point -- that a carefully designed competitive bidding process can overcome the disadvantages of a lottery, follows almost automatically.

Authorization to use the spectrum would still require the two separate steps: the first, in which public interest decisions are essential; and then the choice of licensee, which can be left to competitive bidding at least as as logically as it can be left to a lottery.

It seems clear to IEEE-USA that a well designed bidding process can alleviate all three of the disadvantages of the lottery. It would be more orderly for prospective licensees, because the bidding takes place in the open and at a single location; it would provide badly needed public funds; and it would eliminate much of the presently wasted effort that goes into the lottery process.

IEEE-USA suggests the following as essential features of a competitive bidding process which will provide these benefits:

1. Spectrum allocation and assignment must continue to be made by the FCC solely on a public interest basis, not subject to auction. Licensing may be accomplished by competitive bidding only in those instances where the specific choice of a licensee is not a matter of significant public concern, other than that the licensee meets the qualifications laid down by FCC.

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2. Licenses assigned by the competitive bidding process must be utilized in accord with FCC's license provisions and time limits.

3. Auctioning of licenses should not allow for overriding any prohibition against FCC licenses being held by foreign entities.

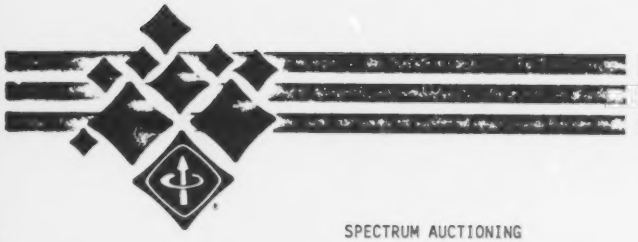
4. A sunset provision should mandate a review, at say five-year intervals, of the results of the competitive bidding process, particularly noting the effects of the FCC's criteria as to when competitive bidding is or is not used.

5. The FCC must retain the ability to DECLINE to use the competitive bidding process in any case in which it believes the public interest would not be best served. For example, the benefits of Pioneer Preference status should not be overridden by the competitive bidding process; and law enforcement agencies should not have to bid on their licenses.

6. The auctioning should apply only to newly issued licenses. Current holders of licenses should not be required to compete for continued use of the licenses, nor should bidding be required for license renewals.

Another suggestion which is not central to the process itself, but which IEEE-USA feels is in the best public interest, is that the Congress should consider using at least some of the funds raised by the auction process to improve the allocation, assignment, and the general spectrum management process. Included in that process is compensation of licensees for expenses incurred in freeing up spectrum for new uses. Spectrum management is highly technical, very complex, and filled with public interest issues -- indeed, that's why we cannot use the marketplace to settle the whole issue. Funding of enhancements to the FCC's process would be money well spent.

We appreciate very much the opportunity to support the concept and the thoughtful practice of competitive bidding for FCC radio licenses.



SPECTRUM AUCTIONING

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The process of allocating licenses, when there are multiple applications, has evolved from a slow administrative process to a lottery, the results of which are not always in the public interest. Proposals have been made to auction licenses, with the proceeds accruing to the Federal treasury.

IEEE-USA supports the use of an auction process in selected instances, where auctioning can be shown to be in the public interest. We emphasize that in those parts of the allocation/assignment/licensing process where human judgment of public interest decisions is critical, auctioning is definitely not an appropriate process. But when public interest decisions have been made and all that remains is to appoint licensees from among a group of qualified applicants, then competitive bidding can be an appropriate mechanism for awarding licenses. To ensure that auctioning best serves the public interest, the IEEE-USA suggests:

1. Spectrum allocation and assignment must continue to be made by the Federal Communications Commission (FCC) solely on a public interest basis, not subject to auction. Licensing may be accomplished by competitive bidding in those instances where the specific choice of a licensee is not a matter of significant public concern.

   IEEE-USA recognizes that in certain cases the public interest does not require the selection of licensees on a judgmental basis, once certain basic qualifications for holding a license are met. It is in such cases that lotteries are being used today. This lottery process has resulted in licenses being awarded to entities whose only apparent reason for applying for a license is to subsequently sell the license to others at considerable gain. This practice has resulted in proposals to make the public the beneficiary of these de facto marketplace transactions by employing an auction process. The auction is intended to cut out the middleman and place the licenses directly in the hands of entities that will actually implement services, while at the same time accumulating the values of the licenses in the public coffers, rather than in the pockets of lottery winners.

Committee on Communications & Information Policy — July 1991

Approving Entity — Date

2. Licenses assigned by the auction process must be utilized in an appropriate manner and within time limits set by the FCC, in order to prevent anti-competitive and other potential abuses.

3. Auctioning of licenses should not allow for overriding of any prohibition against FCC licenses being held by foreign entities.

4. Consideration be given to use of the proceeds of auctioning to improve spectrum utilization and management.

5. A sunset provision that would mandate a review, at five-year intervals, of the results of the competitive bidding process, particularly noting the effects of the FCC's criteria as to when auctioning is used.

6. Provision be made for ensuring that the benefits of Pioneer Preference status are not overridden by the auction process.

7. Spectrum auctioning not be retroactive; that is, current holders of FCC licenses should not be required to compete for continued use of those licenses.

IEEE-USA believes that the above suggestions will enhance the benefits of the license auction process and will help to clarify for purposes of public debate where auctioning is appropriate and where it is not. We stand ready to assist in incorporating these suggestions by participating in working sessions or public meetings, by providing testimony, or in other appropriate ways.

Mr. COOPER. Thank you, Mr. Powers. The next witness happens to be a good friend and constituent of mine, Mr. Robert Clemons from the Bledsoe Country Telephone Cooperative in Pikeville, Tenn. I would just to express my personal appreciation for your making the long trip up from Pikeville to be with us today to share your wisdom on this issue.

STATEMENT OF ROBERT CLEMONS

Mr. CLEMONS. Thank you, Congressman. Good morning members of the committee. My name is Bobby Clemons, Manager of Bledsoe Telephone Cooperative in Pikeville, Tenn. Our cooperative holds licenses in a number of radio services. We are a radio service to individual subscribers, cellular telephone service, paging, IMTS or improved mobile telephone service, and maintenance radio. Today, I am speaking on behalf of the National Telephone Cooperative Association.

I appreciate the opportunity to appear before the committee today to explain what the impact of spectrum options would be on small rural companies like Bledsoe. First of all, let me say that I and we oppose H.R. 1407 because of the inclusion of auctions in the bill. Congress has wisely rejected auction proposals since they first appeared in the administration's budget in 1987. We urge you to continue to do so.

The use of auctions to assign spectrum is contrary to public interest. The market system of assigning spectrum contemplates the use of auctions in which the limited natural resource would be awarded to the highest bidder. Auctions supporters argue that users would employ spectrum more efficiently under an auction scheme because they would be paying for it. This argument overlooks an important consideration in both the communications and rural electrification acts, which clearly state that universal service is in the public interest.

With respect to the allocation of radio frequency spectrum, FCC policies have enabled small companies like mine to obtain licenses to use spectrum for rural telecommunication services and build the necessary networks to fulfill their carrier obligations. If the ability to provide our current services and the ability to compete for licenses for new services is lost because spectrum is auctioned off to the highest bidder, the availability of telephone service to the widest practical number of rural users might be reduced.

This would be the case, because the deep pocket interests who are able to pay the highest price would not make service the top priority the way a small company like Bledsoe that's entrenched in its local community would do. In economically difficult times the deep pocket interest would invest in the lucrative markets while they hold on to the less lucrative licenses in rural areas. They would, therefore, have to sacrifice universal service in the interest of maximizing their profits and margins.

NTCA believes that the market based spectrum analysis system would be both unfair and inefficient. Awarding radio licenses to the highest bidder would, in most cases, eliminate from the process small telephone companies franchised to provide telecommunica-

tion services in rural areas and low density areas throughout the country.

Auctions would allow large firms with plentiful resources to outbid us, the small companies with fewer resources, who are committed to providing this service in these rural areas and under difficult circumstances. Rural companies need radio licenses in order to provide adequate basic telephone service, including personal communication services and the other new services that may require spectrum.

If the big money players are allowed to buy up this spectrum, small carriers and the communities they serve would be vulnerable to the possibility of not being able to provide complete modern efficient service we now provide by interfacing the wire and the radio systems. Under an auction scenario, small telephone companies would be left with the least desirable portions of the network, and this potential indicates that a bidding system would result not only in unfairness but in inefficiencies and stranded investments. Or, worse yet, abandonment of services to less rural areas.

The abandonment of service to rural America is consistent with the Communications Act, the Rural Electrification Act, and in the national interest. In conclusion, we urge Congress to reject the proposal for auction of radio spectrum. Thank you.

[The prepared statement of Mr. Clemons follows:]

STATEMENT OF

ROBERT CLEMONS

ON BEHALF OF THE

NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

NTCA opposes H.R. 1407, the "Emerging Telecommunications Technology Act of 1991," because auctions are included in the bill.

NTCA believes that a market-based spectrum-assignment system would be both unfair and inefficient. Awarding radio licenses to the highest bidder would, in most instances, eliminate from the process small telephone companies franchised to provide various telecommunications services in rural and low density areas throughout the country. Auctions would allow large firms with plentiful resources to outbid small companies, with fewer resources, but who are committed to service in these areas over a long period of time and under difficult circumstances. Rural companies need radio licenses in order to provide adequate basic telecommunications services, including personal communications services and other new services that may require spectrum. If the big money players are allowed to buy up the spectrum, small carriers and the communities they serve would be left vulnerable to the possibility of not being able to provide the complete modern and efficient service we now provide by interfacing wire and radio systems.

INTRODUCTION

Good morning Mr. Chairman and members of the Subcommittee. My name is Robert Clemons. I am the Manager of Bledsoe Telephone Cooperative in Pikeville, Tennessee. Today I am speaking on behalf of the National Telephone Cooperative Association (NTCA), which is a national trade association representing

almost 500 small, independent telephone systems throughout rural America. I and many other NTCA members use radio frequencies to provide communications services to our subscribers. Radio is a critical component of our telecommunications network.

I appreciate the opportunity to appear before the Subcommittee today to explain what the impact of spectrum auctions would be on small rural telephone companies such as Bledsoe.

BACKGROUND

In 1986 the Federal Communications Commission proposed legislation authorizing the sale of non-mass media radio spectrum. In October, 1986 this subcommittee held a hearing on auctions, but no action was taken.

From 1987 on, the auction proposal has appeared in the President's budget under both the Reagan and Bush Administrations. Each time the plan was to sell non-mass media radio licenses to the highest bidders.

The current FY 1991 budget proposal appears to anticipate auctions as a component of legislation to free-up federal government spectrum. Although the budget proposal is silent on which licenses would be auctioned, history has shown that the non-mass media licenses have been targeted for auctions. Auctions have also recently been proposed in the Senate to pay for extended unemployment benefits.

Congress has for the past several years wisely rejected auction proposals and we urge you to continue to do so.

THE USE OF AUCTIONS TO ASSIGN SPECTRUM IS CONTRARY TO NATIONAL POLICIES AND THE PUBLIC INTEREST

The market system of assigning spectrum contemplates the use of auctions in which this limited natural resource would be awarded to the highest bidder. Supporters of this system argue that users would employ spectrum efficiently under the auction scheme because they would be paying for it. This argument overlooks some important considerations inherent in the national policy as expressed in the Communications Act of 1934. One of the purposes of the Act is to assure universal service, i.e., "to make available so far as possible to all the people of the United States a rapid, efficient, nation-wide and world-wide wire, and radio communication service with adequate facilities at reasonable charges. . ." 47 U.S.C., Sec. 151 (emphasis added). Policy makers need to be constantly vigilant to assure that this goal applies equally to rural America. The public policy contained in the Communications Act is also reflected in the Rural Electrification Act of 1936. The RE Act, Section 1, 7 U.S.C., Sec. 921, specifically articulates the universal service goal for rural America in a declaration of policy designed to "assure the availability of adequate telephone service to the widest practicable number of rural users of such service." Both the FCC and the REA have supported these mandated national goals by enacting rules, regulations and policies which have generally promoted the provision of telecommunications services to our country's rural subscribers. With respect to the allocation of the radio frequency spectrum, FCC policies have enabled small carriers to obtain licenses to use

frequency spectrum for rural telecommunications services. Under existing procedures, small telephone companies like Bledsoe, have, for the most part, been able to obtain the necessary radio licenses and build the necessary network facilities to fulfill their common carrier obligations. Our cooperative holds licenses in a number of radio services. We provide Rural Radio Service, which connects remote subscribers to a central office, where the terrain and distances are such that the cost of conventional wire facilities between their homes and the central office would be prohibitive. We also provide Improved Mobile Telephone Service (IMTS) which connects mobile subscribers to the central office and each other. The service predates cellular and is used in some of the more sparsely-settled areas where cell sites are not practical at this point in time. In addition, we have a license to provide cellular service in a portion of RSA seven, which is totally within Bledsoe's service area. We use maintenance radio, which is a two-way mobile radio service that enables us to communicate rapidly and efficiently with our employees. It is critical in remote areas to be able to contact, for example, a linesperson, who must cover a vast territory, and get him or her to a site where repairs, maintenance or construction is needed. It is also cost effective to be able to communicate with the maintenance vehicle. For example, maintenance personnel might be out on a job when another call for service comes in to the office. With maintenance radio they can go right to the next job without returning to the office first. Finally, we provide paging service. In addition, we are taking a good close look at new radio technologies as well.

Although we do not provide it, many small telephone systems provide point-to-point microwave service. Point-to-point services are used to connect a group of subscribers with a central office and to interconnect the central office with those of other telephone companies so that rural subscribers can reach anyone in the United States and the world. Microwave radio is an invaluable service because it is a more cost effective method of construction than wire in many rural applications. This keeps telephone rates reasonable.

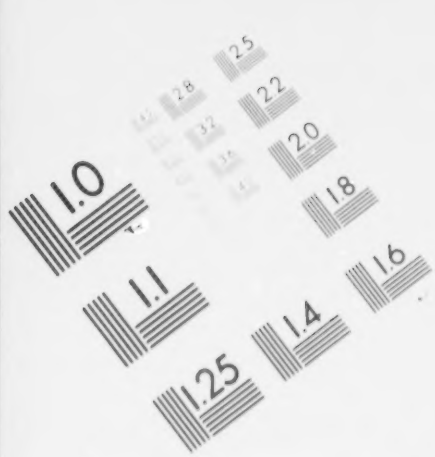
If the ability to provide our current services and the ability to compete for licenses for new services is lost because spectrum is auctioned off to the highest bidder, the availability of adequate telephone service to the widest practicable number of rural users would be reduced. This is the case because the "deep pockets" able to bid the highest price would not make service the top priority the way a small company entrenched in the community would. In a crunch, the deep pocket interests would invest in the lucrative markets while they hold on to less lucrative licenses in rural ares. They would therefore have to sacrifice universal service in the interest of maximizing their profit margins.

NTCA believes that a market-based spectrum-assignment system would be both unfair and inefficient. Awarding radio licenses to the highest bidder would, in most instances, eliminate from the process small telephone companies franchised to provide various telecommunications services in rural and low density areas throughout the country. Auctions would allow large firms with plentiful resources

to outbid small companies, with fewer resources, but who are committed to service in these areas over a long period of time and under difficult circumstances. Rural companies need radio licenses in order to provide adequate basic telecommunications services, including personal communications services and other new services that may require spectrum. If the big money players are allowed to buy up the spectrum, small carriers and the communities they serve would be left vulnerable to the possibility of not being able to provide the complete modern and efficient service we now provide by interfacing wire and radio systems. Under an auction scenario, the small telcos would be left with the least desirable portions of networks constructed to provide service to our rural communities. This potential indicates that a bidding system will result not only in unfairness, but in inefficiencies and stranded investments, or worse yet, the abandonment of service to less lucrative rural areas. The abandonment of service to rural America is inconsistent with the Communications Act, the Rural Electrification Act and the national interest.

THE USE OF AUCTIONS TO ASSIGN SPECTRUM WOULD ADVERSELY AFFECT RURAL DEVELOPMENT

The existence of adequate telecommunications services is crucial to rural development. National policy favors and supports economic development and the revitalization of rural America. For example, the REA Act provides for zero interest loans for the purpose of promoting rural economic development and jobs projects. 7 U.S.C. Sec 940 and 7 C.F.R. Sec. 1709. The adoption of the bidding system



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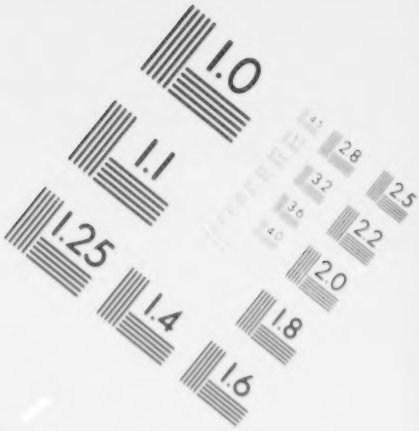

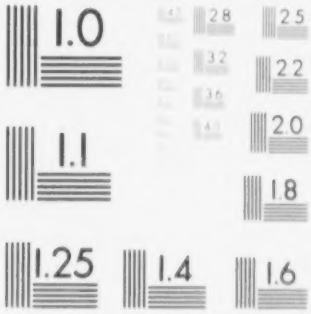

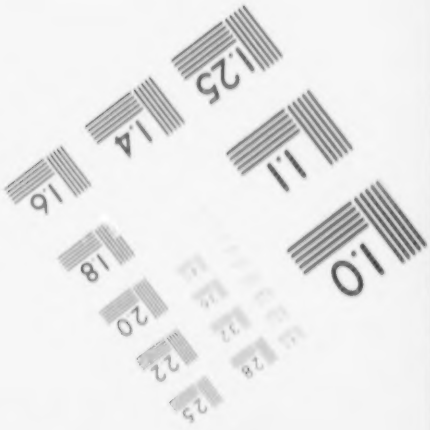

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would be at odds with the national policy favoring the promotion of rural economic development. The institution of a system which would award spectrum to the highest bidder ignores rural community interests in preserving and favoring their local telephone companies which are economically viable businesses in the communities they serve.

Federal policies have made it possible for small telephone systems to provide telecommunications services in the less lucrative markets. Continued service to these rural communities offers new development potential in the Information Age. Small telephone companies are keeping pace with the technological developments needed to provide the telecommunications services so vital to fostering rural economic development. Telephone systems like Bledsoe are committed to the communities and subscribers they serve. Their survival should be promoted, not obstructed, by spectrum policy. A market-based system would destroy the progress which has been made in rural telecommunications by inviting speculation in radio licenses as commodities instead of services. Rural communities need services to develop their economies, not another group of speculators in a commodity market.

CONCLUSION

NTCA urges Congress to reject the proposal to auction radio spectrum because it is poor public policy to favor large, wealthy companies over small ones. Small rural telephone companies who wanted to expand present services or offer new ones would be effectively precluded from the licensing process under an auction scheme.

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Mr. COOPER. Thank you, Bobby. I appreciate that excellent testimony. I would be happy to defer to my colleague, Mr. Ritter of Pennsylvania, if he would like to go first with questions. I have some that I would like to ask, but in deference to my colleague who showed such leadership on this legislation which, by the way, I am very interested in and much more positive toward than many of members on my side of the aisle.

Mr. RITTER. I thank the chairman for his interest, and welcome his constituent as well. Both Mr. Clemons and Mr. Rick have brought up this issue of public interest, one for public interest being served by people who live a lot further apart in some places than they do in cities. You brought up the issue of emergency services.

Doesn't the FCC need to still allocate spectrum to various services under a public interest standard? Why would the bidding that we talk about where the taxpayer or—let's put it in terms of 1407 where the taxpayer gets the benefit, the benefit goes to the public. Why would that be any different than the current situation, where there is also a public interest standard in play and the highest bidder is—kind of secondary market highest bidder who then makes a millionaire out of the applicant who is simply in it for lottery purposes.

I mean, why would the public interest be diminished under H.R. 1407 versus the public interest under the current circumstance, I guess? Mr. Clemons and Mr. Rick.

Mr. RICK. I don't want to be misunderstood. Right now, we receive a block of frequencies designated as public safety fire police—whatever, local government. Through a coordinator they are assigned, the APCO people are the coordinators.

What we are concerned about is that people in commercial entities or larger organizations will outbid us for the spectrum or outbid our right to get that spectrum. In other words, if we get 200 megahertz of spectrum, how much of that is going to go to public safety when you can earn money through the bidding process. Why give any to a public safety agency that is not going to provide you any money with the license. That's what I am talking about.

Mr. RITTER. Doesn't the Commission though, make the decision in having to fulfill its public interest requirement—make the decision to allocate to groups such as yourself now, and wouldn't it be similar in the future? We are not changing the public interest standard by any means for FCC operation. Am I missing something? Mr. Powers, do you want to comment on that?

Mr. POWERS. Yes. I would like to comment on that. I appreciate the concerns of both of the gentlemen on my left and right here. The FCC says this spectrum will be used for common carrier microwave purposes. In Pikeville, Tenn., there would be no way for an entrepreneur who happens to live in Dallas, Texas to come along and say I want to buy up that spectrum.

That spectrum is for common carrier microwave use, and the locally authorized common carrier would be the only one that is eligible to use that spectrum.

The concern for public safety, once the Commission has decided that some spectrum will be used for public safety, then it becomes a matter of grinding the crank and see how you divide it up with

your fellows around New York City. I appreciate the concern that if so much pressure is put on the FCC to raise money that they start snitching spectrum from public interest purposes and designating it for a commercial purpose and then putting it up to auction, that would be a real problem.

I don't see that as the thrust of what we are trying to do here.

Mr. RITTER. Wouldn't there be a counter balancing pressure that these groups could place on Congress, FCC being overseen by the Congress? I mean, doesn't that kind of thing have a tendency to work itself out?

Mr. POWERS. I think so. Remember the separate process, the public interest and then the auction. In the process of allocating that spectrum to one purpose or another, these gentlemen and others representing specific public interest uses would be there pounding the table saying FCC if you take this away we can't trace bad guys anymore in our police department.

Mr. RITTER. I think it would be really tough to somehow upset the apple cart on the very important political constituency that rural America represents, as the chairman will attest, or the emergency service constituencies that constitute the present definition of public interest.

Mr. POWERS. I hope and believe that you are right.

Mr. RITTER. I would like to engage——

Mr. POWERS. Human beings that run that shop over there are not——

Mr. RITTER. I would like to engage Mr. Davidson in a debate here. As a Member of Congress from a labor democrat district, the first republican in that district as so constituted in this Century and having probably the highest NTU rating in the country, if you would factor in being six or seventh by the way in that middle Atlantic Northeast region in your ratings over the decade plus and probably the highest rating in the country if you would factor in what kind of district somebody is coming from.

It is one thing when your district is 75 percent republican to vote straight NTU. It's another thing when you have a district like I do. In any event, we are still way up there on your ratings.

I guess my thought is you are dealing with spectrum, you are raising money from spectrum. Doesn't it make some intellectual sense to take the funds raised from spectrum; doesn't it create a political ground swell to actually go forward, do this and do this right, if you go from one telecommunications use to a telecommunications investment kind of like the National Parks Service fee. You take it from people who use the national parks and you use it to better the national parks.

Doesn't it make even fiscal conservative sense to make that kind of investment?

Mr. DAVIDSON. No, and I think your example of the National Parks is a good one but it means the opposite of what you suggest. I applaud you for your record, and I applaud you for your initiative in putting forth this legislation along with Congressman Oxley and the Representative Tauzin and others who have taken a lead.

One of the things that has tended to happen, if we look at the way that the public lands are managed, is that you get this incestuous operation where revenues are circulating back and forth and

you end up with very inefficient activities taking place because after all, this money is generated by the grazing fees so we can use it to screw around here and do things that probably——

Mr. RITTER. You don't believe in user fees then?

Mr. DAVIDSON. I believe in user fees, but this is not a question of a user fee. This is a question of a valuable asset that belongs to the whole public at a time, as I emphasized—and I would like to reemphasize this—39.1 percent of total Federal receipts right now are being absorbed by statutory interest payments on the national debt.

This country is broke, and I think that it is time that you Members of Congress—and I say this as ecumenically as I can—understand that there is a fiscal crisis. The economy is sinking, and we are sitting here as if we have this little bit here and we can allocate it this way. It is like a farmer who has a field, and some parts of the field are very productive and some parts are rocky. You cannot take the good, productive parts and allocate them to specific uses and just leave the rocky bits to be traversed over by the rest of the farm.

You can't bankrupt the whole process in order to say conveniently that things are solid in one place. It's like the Social Security Trust Fund image which has intoxicated so many people. We say Social Security is paying or itself today—people who earned more than $100,000 a year are receiving 5.6 percent of all Federal entitlements. Thirty billion dollars are going to families with adjusted incomes of more than $100,00 a year and people say you don't have to look at Social Security because it pays for itself.

It's the same kind of silliness that we get into if you allocate the valuable resources that we have in this country and just turn them into a slush fund for the telecommunications——

Mr. RITTER. Let me try to communicate this idea. Again, going from the basis of user, that this would be a user fee and that investments in infrastructure, in the telecommunication infrastructure, is absolutely essential to the economic future of this country, much like we invested in the national interstate highway program.

The problem is, at a time when we invested in the national interstate highway program we did have a user fee to do it, we had the gas tax. But telecommunications infrastructure, for example, the fiber optic wired America of the future does not have this kind of dedicated fee and it may well need it. In other words——

Mr. POWERS. If that's what you believe—I think that the process of allocating the budget, the expenditure, ought to not be put into automatic pilot so we don't debate the question whether it is actually a valuable or the most valuable way of spending the limited funds—I stress limited because that's a concept that doesn't seem to have its full acceptance in this forum—that are available for investment in all forms of public activity.

Let's let those things compete. There are pressing needs all across this country. The most pressing need that most people feel is the fact that they cannot make ends meet. Average weekly wages in the United States have fallen to 1961 levels on a pre-tax basis. The only thing that keeps the society income standards rising is the fact that interest income has doubled over the last decade partly because we are paying so much money out for the govern-

ment as an escrow agent, paying interest to the bond holders, and because the husbands and wives today both work. Whereas, in 1961 they could enjoy that living standard with one person——

Mr. RITTER. No, in 1961 the living standard was lower than it is today, and it has increased substantially because of two income earner families. We do agree——

Mr. DAVIDSON. Check the figures. The average weekly wage on a pre-tax——

Mr. RITTER. I understand.

Mr. DAVIDSON. On a pre-tax basis is back to where it was in 1961. The most important challenge that we have in this country is to get living standards rising again, and to let people keep the money they earn instead of having the Congress misallocate it or——

Mr. RITTER. As someone with a strong NTU voting record, I couldn't agree with you more. I think we do agree that competitive bidding for this valuable resource is extremely important to go forward with, and we may just have some other disagreements on the——

Mr. DAVIDSON. Put the money in the Treasury. The Treasury desperately needs the money.

Mr. RITTER. We get your message loud and clear, Mr. Davidson. Thank you. Mr. Chairman, thank you.

Mr. COOPER. Thank you, Mr. Ritter. Rather than ask many questions myself, since we have another committee hearing going on simultaneously that I do need to attend, I would like to make a short statement.

I can't help but feel that the two sides are closer together than perhaps they even realize. I think we can reach a sensible accommodation to protect the rural telephone cooperatives, to protect public safety and uses of the spectrum and, yet, allocate spectrum in a far more efficient and sensible manner than we are doing today. The status quo is not worthy of being preserved; the status quo must be changed. I am not saying that H.R. 1407 is a perfect bill, but it does contain the seeds of ideas that are very important and very powerful, and that I think most of us can agree on. I represent a district that is 100 percent rural. I love telephone cooperatives, I love my rescue squads, my fire departments and folks like that. I want to protect you all. You will be protected, even under an auction scheme.

We don't have the perfect bill yet, but I think if we work together we can achieve one. So, I think that given a cooperative spirit, ideally we could only tackle new spectrum uses but even existing spectrum uses. I made speeches years ago to the broadcasters and others saying you should pay for the spectrum you are using. You can survive politically and say that, and I think that hopefully over the next few months we can work on a sensible proposal that accommodates our mutual interests because we are all in this together.

I look forward to achieving that sort of solution that we can all come together and agree on instead of criticize it. I don't want to cut off final comments that any of the panelists might want to make. Time is diminishing, but if there is someone who would like to make a concluding comment, I would be happy to give you the last word.

If not, then this hearing is adjourned. I appreciate the excellent testimony of the witnesses.

[Whereupon, at 11:37 a.m., the hearing adjourned.]

[The following statements were submitted for the record:]

STATEMENT OF THE AIR TRANSPORT ASSOCIATION OF AMERICA
BEFORE
THE ENERGY AND COMMMERCE SUBCOMMITTEE ON TELECOMMUNICATIONS
ON THE SUBJECT OF ELECTROMAGNETIC SPECTRUM AUCTIONS
OCTOBER 9, 1991

The Air Transport Association of America (ATA) represents 20 major carriers which transport more than 96 percent of all passenger and cargo air traffic in the United States. ATA appreciates the opportunity to comment on the proposal for the federal government to auction electromagnetic spectrum.

The electromagnetic spectrum is becomingly an increasingly scarce resource as technology evolves to provide communications services that are independent of physical connections to copper wire or fiber optic cables. As with any resource that is in limited supply and has significant demand, the associated value increases. Since the spectrum is a resource controlled by the federal government under the Communications Act of 1934, the perceived value of spectrum is now being viewed as a potential source of revenue to reduce the deficit. To maximize the revenue, advocates are proposing to auction the spectrum to the highest bidder.

Any proposal to auction the spectrum represents a significant departure of current public policy. The existing allocation and license process is predicated on analysis by the Federal Communications Commission of the public interest and technical competency of the competing applicants. An auction scheme threatens to install a system where the income to the government becomes the sole criteria for license awards.

The airline industry is not in the business of providing communications services for profit; however, it is a significant user of the electromagnetic spectrum for safety and safety-related purposes. These uses include airline radio communications between aircraft and the ground to achieve compliance with requirements established in the Federal Aviation Regulations, airborne weather radar used to avoid areas of severe weather, radio altimeters to precisely determine altitude above the ground when operating at low altitudes, radio equipped ramp vehicles to move safely and efficiently in the aircraft movement area, portable radios for maintenance and passenger service, and ground-based weather radars to formulate operating plans to avoid adverse weather at major hubs. While these uses of spectrum are not all classified as safety services under current FCC allocations, they all have impacts on the safe and efficient carriage of over 400 million passengers annually by ATA's member airlines.

We believe that to be prudent, a spectrum auction policy, if adopted, must exclude portions of the spectrum allocated to services which are used for compliance with existing Federal Regulations, as well as safety and safety related services. Otherwise, airline users would be in the untenable position of having to make outrageous bids to assure the availability of services essential to the safety of the traveling public.

STATEMENT OF
ASSOCIATION FOR MAXIMUM SERVICE TELEVISION
ON H.R. 1407
TO THE HOUSE SUBCOMMITTEE ON
TELECOMMUNICATIONS AND FINANCE

MSTV is an organization of local broadcast stations devoted to assuring that the free, local and universal television service provided to the American public is of the highest technical quality. Spectrum allocation and interference issues have been at the forefront of MSTV's concerns for over 35 years.

MSTV has previously testified before this subcommittee in support of earlier versions of the "Emerging Telecommunications Technologies Act of 1991" -- H.R. 531, and in the last Congress, H.R. 2965. We applaud the subcommittee for developing and pursuing these far-sighted and urgently-needed initiatives to make additional spectrum available for commercial use and to encourage more efficient management of government spectrum. However, we are also extremely concerned about provisions of H.R. 1407 that would give the FCC authority to assign some or all of the spectrum to the highest bidder. That is why we support H.R. 531 and oppose this legislation.

HDTV

We strongly support the reallocation of 200 Mhz of government spectrum to the private sector. Private sector demand for spectrum has been steadily increasing. A notable

byproduct of this intense growth in demand for spectrum is the seemingly never-ending stream of requests for spectrum assignments on frequencies in, near, or contiguous with the television broadcasting bands. Many if not most of these requests, if granted by the FCC, result in harmful intereference to the reception of television signals by the public, and degradation in the quality of broadcast television service. Sufficient interference-free spectrum, both for stations' primary transmission channels and for their news gathering and auxiliary needs, is critical to ensure that high-quality local television service continues to reach the American public. Moreover, broadcasters are now devoting enormous resources to efforts to develop a High Definition Television (HDTV) system within the VHF and UHF spectrum now allocated to local broadcast television use. Reallocated government spectrum would alleviate potential pressures from other users, thereby ensuring high-quality local broadcast television service in the future.

Auctions

MSTV remains fundamentally opposed to the concept that spectrum be allocated or assigned by the FCC on the basis of competitive bidding. Adoption of competitive bidding procedures would undermine and detract from the purposes of the Communications Act. The allocation or assignment of spectrum by a competitive-bidding process would create

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incentives for the government to maximize its revenue by allocating the most highly-valued spectrum to services subject to the competitive bidding, rather than basing such decisions on sound public interest determinations. Also a limited spectrum auction, even if not applied to broadcasting services today, could well set a precedent for the use of auctions in the future, possibly for broadcasting services. The value of the broadcasting system's benefits to the public, while not easily quantified, far outweighs any theoretical and short-term economic benefits which may derive from competitive bidding allocation or assignment mechanisms.

Broadcasters are about to embark upon the greatest period of capital investment in their history to implement HDTV at a time when they are being subjected to unprecedented competitive pressures and very hard economic times. The costs they face are truly daunting. Recent estimates indicate that the broadcast industry will have to invest billions of dollars to make HDTV available to the public. Requiring local stations to expend significant additional sums just to get access to the spectrum they will need for HDTV would create a grave risk that the local broadcast system, alone among home video providers, may never be able to offer HDTV to the public.

Government Spectrum Management

Reforming the federal government's spectrum management processes is just as important as freeing up new

spectrum. Those processes must be made more open and NTIA must be required on an ongoing basis to undertake meaningful assessment of the efficiency of its sister agencies.

Identifying 200 Mhz of re-allocable spectrum and generating the usage and planning reports now required by the Act will expose a great deal more information concerning federal government spectrum usage to public scrutiny in the initial two-year period and require NTIA to analyze the usage of a great deal of government spectrum. NTIA's recently announced changes to bring more "sunshine" into its processes also are steps in the right direction.

But it is also vital to require permanent structural reform that establishes public involvement in these deliberations on an ongoing basis and requires NTIA to engage in periodic and systematic public analysis of the efficiency of federal government spectrum.

Reallocation Procedures

We are concerned that the timetable proposed in the Act may not be sufficiently rapid to provide the relief the private sector so urgently needs. We also are concerned that the Secretary of Commerce may designate up to one-half of the 200 MHz of spectrum in bands which can be used up to 49% by government users, effectively reducing the amount of new private spectrum by 25% and effectively grandfathering existing government users of those bands. We also again request that spectrum above 6 GHz be added to that which the federal government must survey.

We again offer our support for reallocation of government spectrum to private use, but oppose allocations and assignments by competitive bidding. We support H.R. 531, passed by the House of Representatives earlier this year, and oppose H.R. 1407.

Statement of

Alfred C. Sikes
Chairman
Federal Communications Commission

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to submit written testimony regarding the important radio frequency spectrum reallocation and competitive bidding issues presented by H.R. 1407, the "Emerging Telecommunications Technology Act of 1991."

Two Major Problems

At present, the Federal Communications Commission (FCC) faces two major problems which Congressmen Ritter, Oxley, and Tauzin's bill would help resolve.

The "Cupboard" is Bare

First, we have a significant supply problem in the most commercially adaptable frequency bands. At present, we have applications seeking some 400 MHz of spectrum, and expressions of interest for about 800 MHz more. These 1200 MHz in requests are for new mobile, satellite, and other radio-dependent, "cutting edge," high-technology communications services.

At the same time, we have only about 3 MHz in this most commercially adaptable frequency band which has not been allocated.

Dysfunctional Processes

Our second major problem is that we do not now have a rational, workable means of dispensing the radio spectrum resource.

In theory, the FCC can always use comparative hearings. This is a resource-intensive process, however, which, in the past has taken an average of about three years.

Even with the reforms which the FCC has adopted to facilitate the hearing process, and to explore alternatives including "alternative dispute resolution," such processes will

take almost two years. In many cases, moreover, the decision reached by the FCC is appealed to the courts.

We also have authority to conduct lotteries. But "application mills" -- and the perceived chance to "strike it rich" in the FCC lottery -- have tended to overwhelm this process.

Need to Privatize Federal Inventory

To meet private sector demand for spectrum, the FCC has been pushing -- and will continue to push -- on a number of fronts. For example:

- We are tightening up our construction rules -- to ensure that frequencies are not "warehoused";

- We are requiring use of more efficient communications equipment;

- We have authorized use of "spread spectrum" technology, which may allow overlaying one use on another;

- We are encouraging digital techniques--which make it possible to get more communications capacity out of the same or less bandwidth;

- We are examining the potential for some licensees to relocate, which would open up a spectrum reserve for new services; and,

- Through our recently adopted "Pioneer's Preference," we are encouraging innovation,

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especially in very high frequency bands where there is currently less use.

Even if all of these agency initiatives are fully successful, we will still confront a significant gap between what radio-dependent services might be -- and what, as a practical matter, we can actually license.

Consequently, legislation along the lines of the Ritter bill -- which would ultimately shift 200 MHz from the Federal Government's spectrum inventory to civilian uses -- is very important.

Resolving Spectrum Auction Concerns

Another important aspect of the Ritter bill is the authority to conduct competitive bidding for spectrum that this measure would confer.

I have now personally spent over five years with this issue. I can appreciate the points which critics of competitive bidding for spectrum have presented. But, I also believe it is possible to develop a competitive bidding process which avoids potential problems, and that the Ritter bill does so.

"Deep Pockets"

It is sometimes argued, for example, that if competitive bidding for spectrum resources is instituted, only large companies with "deep pockets" will win. I do not believe, however, that this argument should carry much weight.

Section 8 of H.R. 1407 authorizes competitive bidding. Under proposed new 47 U.S.C. §309(j)(1)(E), the FCC would be explicitly empowered to adopt rules "establishing competitive bidding procedures... including the method of bidding and the basis for payment (such as flat fees and royalties, combinations

of flat fees and royalties, or other reasonable forms of payment)... ."

The flexibility that this bill would accord the FCC, in short, would give the agency the means to ensure that all -- not simply those with "deep pockets" -- can participate in the overall competitive bidding process.

"Compromising the Public Interest"

Another argument which is periodically advanced is that competitive bidding is inconsistent with the public interest concepts which the FCC follows, most notably in broadcasting. A related concern is that nonprofit, public safety, or similar spectrum users might be unable to bid.

Again, this issue is addressed in H.R. 1407. proposed new 47 U.S.C. §309(j)(2) would explicitly exempt "(C) amateur operator services, public radio ... [and] public television broadcast services, public safety services, and radio astronomy services." The bill would also authorize the FCC, following appropriate notice and comment, to exempt other classes of service or assignments from any competitive bidding (proposed new 47 U.S.C. §309(j)(2)(F)).

"Eroding the License System"

A final concern that I would like to address is the argument that allowing competitive bidding for spectrum would erode the licensing system established under the Communications Act. Again, however, I do not believe this is true.

Simply because private parties buy mineral, timber, or water rights from the Federal Government does not exempt them from environmental regulations. When an individual buys a house, or other real estate, he or she buys it subject to land use management, zoning, and other limitations. When you buy an

automobile, you do not escape compliance with motor vehicle regulations.

Persons getting radio spectrum licenses via competitive bidding would be as subject to FCC rules and regulations as those who now get them through comparative hearings or lotteries. Competitive bidding for spectrum, in short, would not affect the FCC's ability to regulate in the public interest.

Speeding the Advent of New Services

There are two important aspects of competitive bidding for spectrum that I would like to mention. First, the process would get the resources into the hands of those most likely to use it effectively. Second, it would do that quickly.

The competitive bidding approach, in short, is pro-consumer. It would --

- Eliminate delay, and reduce application preparation and processing costs;
- Help assure qualified licensees;
- Help assure the quick start of new radio-dependent communications services; and,
- Provide all citizens with a fair return on this public asset.

Conclusion

In conclusion, I believe that Congress would make a significant contribution to the national interest by enacting legislation that --

- Shifts spectrum from the Federal Government's own inventory to the FCC, where private sector could be authorized; and,
- Gives the FCC authority to engage in competitive bidding process for radio spectrum licensing.

Thank you for providing me with this opportunity to share my views on this important subject.

STATEMENT OF HENRY GELLER,
COMMUNICATIONS FELLOW, THE MARKLE FOUNDATION,
TO THE HOUSE SUBCOMMITTEE ON TELECOMMUNICATIONS
AND FINANCE ON COMPETITIVE BIDDING FOR SPECTRUM
October 9, 1991

I greatly appreciate the opportunity to submit this statement on a matter of the greatest importance to telecommunications policy and thus to the nation. I strongly support the Administration position on competitive bidding for spectrum authorization. I believe that it accomplishes a much needed and long overdue public interest goal, and does so in a way that is carefully crafted to protect the public interest in every way.

I will not go over either the essence or the details of the Administration position. That has already been presented to the Subcommittee in the statements and testimony of the Government witnesses. Rather, I shall set forth the basic reasons for my strong support.[1] Those reasons stem from my experience as General Counsel of the FCC (1964-1970) and as head of NTIA (1978-1981). Indeed, in 1980, NTIA, under my stewardship, urged the use of auctions in the common carrier and private radio fields (e.g., for cellular and MDS authorizations). Most significantly, the Carter Commerce Department thus advanced the same position as the Administration does today. For, as I hope to join others in showing, common sense and experience compels adoption of that position.

As we all recognize, the radio spectrum is a precious resource. Like other resources such as land, parts of the

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[1] I shall focus only on highlights; a full discussion is set out in Geller and Lampert, Charging for Spectrum Use, Benton Foundation Project on Communications, 1989.

spectrum are in great demand. So the issue is how to authorize use of the spectrum among the many applicants for these scarce sectors.

The Government todays employs two methods -- the comparative hearing and the lottery. So the first question is how effective or successful have these methods been.

The comparative hearing is a total failure. It has failed in the broadcast field. As early as 1962, the eminent scholar, William K. Jones, after studying the process for the Administrative Conference of the U.S., concluded that "[f]or inefficient and highly questionable use of the adjudicating process, it is difficult to find a rival to the comparative hearing in a radio or television case."[2] That has continued to date: The FCC's comparative process was aptly described recently as "a sham and a shambles."[3]

Further, the comparative case is settled 80% of the time. An applicant that ranks last on the comparative criteria can readily be the winner if it pays the most to buy out the others; it can and often does immediately sell the station to the highest bidder. Thus, in Homestead and Miama, Florida, applicants did just that.[4] One, for example, paid roughly two million dollars to buy out the others and sold the station in six months for $10

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[2] See W.K. Jones, Licensing of Major Broadcast Facilities by the FCC, Admin. Conf. of the U.S., Sept. 1962, 198-99. There have been numerous other studies reaching the same conclusion.

[3] D. Tillotson, Broadcasting Mag., Oct. 5, 1987, at 22.

[4] See Homestead Minority Broadcasters, FCC 84-696; Connie Wodlenger (Miami), FCC 82-736.

million. This is not a public interest process: It is a private auction, first to get rid of the other applicants in the hearing and then to the highest bidder in the country.

The comparative process is an even greater failure in the common carrier or private radio area. At least in the broadcast area, there are some criteria that are not just paper promises (e.g., diversification of ownership of mass media; 100% local ownership integrated into the operation). In the common carrier and private radio fields, the operation is strictly one of rendering the most efficient service, in quality and charges, to the licensed area. The competitve market place sorts out winners and losers; government decision on detailed paper showings reflecting the skills of lawyers is a joke, and a bad one at that. Oscar Wilde once described foxhunting as "the unspeakable in full pursuit of the inedible;" the comparative process in the common carrier and private radio field is "the unwilling [the FCC] in full pursuit of the undecidable."

It has been urged that the process can be streamlined and made to work, say, in the personal communications service area. Do not believe it. The streamlined process in the first 30 cellular markets averaged 18 months, and imposed a great deal of costs on the agency and the applicants (e.g., for legal, engineering and economic assistance).[5] In the end, the FCC anointed a winner, who then often sold out to someone -- a McCaw or Fleet Call -- who really wanted the spectrum and was willing

[5] See E. Kwerel and A. Felker, Using Auctions to Select FCC Licences, OPP, May 1985, at 11-14.

to pay the highest price because that entity thought it could use the resource most productively and earn the highest return from it. That's a desirable end process. What's undesirable is the comparative hearing/private auction intermediate process, which simply entails delay and unwarranted costs. It is really a welfare payment to intermediate operators and their lawyers, engineers and economists associated with the "gaming" comparative process.

The Congress authorized the FCC to use lotteries, and the Commission, because of dissatisfaction with the comparative process, turned to this process as to the cellular markets below the top 30. But the result was an enormous increase in the number of applications filed -- from 1200 before the decision to use lotteries was announced to hundreds of thousands after the decision. For this is just a sweepstake, with the winner reselling to the highest bidder (or some applicants hoping to be bought out prior to the drawing). The Wall Street Journal article, "Dialing for Dollars", [6] graphically describes the process. This process thus also imposes serious costs and delay, and no benefits. There is an auction, but it is a private one after the costs and delay of the lottery.[7]

It has been argued that the lottery could be implemented in a fashion conducive to cutting down the horde of "Lotto" applicants -- by, for example, requiring more detailed showings

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[6] June 20, 1988, at 1, 6 ("FCC's Drawings Are a Boon to a Few, Loss to Many, Bring the U.S. No Money").

[7] See, e.g., Bill Welch, 3 FCC Rcd 6502 (1988) (for profit sale to McCaw of an unbuilt cellular authorization).

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of financial, technical plans, performance guideposts, etc., and a requirement that the system be built and operated for some period of years (e.g., two or three years). Perhaps this might reduce the number of applicants. But to paraphrase "Field of Dreams," if the Government is going to pass out valuable rights, "they will come" and in droves still. Assisted by the lawyers, they will meet any filing criteria, and if required to build and operate, the winner will do so, probably on as minimal a basis as possible, before cashing in the "winning ticket." All this imposes additional costs on the applicants and the agency and further delay in processing before the lottery. Nor does it serve the public interest to have such an applicant engage in the service for the minimal period rather than the McCaw or Fleet Call that is really interested in making the most efficient and productive use of the facility. And in the end, there is still the private auction.

In short, the comparative and lottery process entail considerable private and public costs and delay. They most often involve a later private auction where the frequency finally gets to the party who values it most and has the incentive to put it to the best use. There are no benefits to the public interest -- only detriments.

The issue before Congress is whether competitive bidding would better serve the public interest than these two flawed processes. It is patently clear that it would. It drastically reduces the private and public costs and the delay involved. It gets the facility immediately to the party that values it most

highly and thus will put it to the best use. There are no detriments: FCC regulation designed to insure against undue concentration and the antitrust laws would remain applicable, and the Administration proposal has several safeguards to protect and promote the public interest. Even without regard to any consideration of the monies involved, the auction process is called for.

However, the sums obtained from the competitive bidding do constitute an additional plus to the public interest. I stress again that you are not avoiding the auction process. There is an auction today. It is a private one, with the monies going to a fortunate few. The public auction not only would have the above benefits but would eliminate the private auction, thus pouring billions into the Treasury. Those sums are much needed. For example, in the telecommunications field, they could be used to defray the costs of moving Government licensees out of the frequencies involved in the pending bills; for a new public safety national plan; for public broadcasting; for low interest loans for minority entrants into broadcasting; for research at ITS; etc. Congress might simply use them to assist in vital areas like education or health care. What makes no sense is to let these billions of dollars slip away.

Suppose I were to come before you and urge that leases on tracts in the Outer Continental Shelf should be passed out through a lottery process, and then there could be a private auction that would accomplish what the public auction does today. You would be astounded by such a proposal. But it is precisely

what you are doing today in the spectrum area.

When we in the Carter Commerce Department urged the use of auctions, we thought we were right but could cite no experience. Now we know. You, the Congress, have the benefit of experience in cellular field for the last decade. That experience conclusively establishes that the use of the comparative process or lotteries can be described in four words: monumentally stultifying and wasteful. Now you are in the decade of the 90's. There are still valuable frequencies to be given out. Indeed, the Congress is soundly moving to effect a reallocation of 200 Mhz of valuable spectrum to the non-Government side. Surely it is folly to repeat the glaring error of the 80's. Surely it is time to move to a new process, competitive bidding, that eliminates the costs and wastes and delay and returns billions of dollars to where they rightfully belong, the U.S. Treasury.

I am aware that there is resistance to moving forward along the lines proposed by the Administration. I can only plead with you in the words of Oliver Cromwell to the Parliament: "I beseech ye, in the bowel of Christ, consider that ye may be wrong." For the stakes to the nation are very large, in both benefits and dollars.

Statement of

The National Association of Broadcasters
Washington, DC

The National Association of Broadcasters (NAB) represents America's radio and television broadcasters, including all major networks. The NAB appreciates the opportunity to provide our views to the subcommittee concerning spectrum auction proposals.

Since 1934, the Federal Communications Commission has been charged with the responsibility for America's airwaves. This agency has used its authority to screen applicants for use of the nation's electromagnetic spectrum and to award frequencies for its use. From radio and TV licenses to telephone microwave transmissions, from satellite signals to cellular telephone service, the FCC has parceled out the nation's spectrum to commercial and non-commercial users alike.

In the area of broadcasting, the Commission has further weighed the ability of applicants to provide service -- the fitness of applicants, both financial and character -- and the promise of applicants to provide free public service to their communities of license. In so doing, the FCC has helped create the greatest system of free broadcasting in the world -- the model which is now being looked at by emerging free broadcasting systems in Eastern Europe and other developing nations.

But as the numbers of users of spectrum have increased, so has the need for more spectrum. In that connection, full Committee Chairman John Dingell has introduced H.R. 531, the "Emerging Telelcommunications Technologies Act of 1991," which would re-allocate an additional 200 megahertz of spectrum currently allocated to the federal government for commercial and private use under control of the Commission. The NAB applauds and enthusiastically endorses H.R. 531, which will help provide a framework for the future expansion of radio and TV broadcasting into such new technologies as high-definition television (HDTV) and digital audio broadcasting (DAB).

However, the Bush administration and some in Congress have suggested that this new spectrum be allocated under different rules than previously existed for broadcasters. They have asked Congress to approve a system whereby new frequencies would be auctioned off to the highest bidder. In addition, the Administration has proposed and the FCC has requested in its budget for next year that broadcasters and other FCC licensees be required to pay annual fees for using the spectrum they already hold under license.

While you are aware of our concern regarding additional fees, we would like to review our problems regarding both fees and auctions.

Spectrum Fees or Auctions: Changing the Traditional Relationship

From the very creation of the FCC, its mandate has been to license stations in the "public interest, convenience and necessity."[1] Thus began the relationship between the federal government and broadcasters. Broadcasters accepted the expectation that they would serve the public interest in exchange for the right to use a frequency for a specific period of license. When that license expired, the broadcaster could be challenged by others if they felt that the station had not operated in the "public interest." The FCC also can revoke a broadcaster's license at any time if it determines the station is not operating in the public interest.

This system was designed to provide the Commission with the fullest latitude to oversee the use of the airwaves with minimal intrusion into the actual content of the programming provided by broadcasters. Stations would be judged in their overall programming to see if they adequately served their local communities, and to make sure they did not demonstrate a pattern of violations of FCC rules or federal law.

While broadcasters have repeatedly recognized problems in the process of license renewal, our nation's system of broadcasting has worked to the benefit of both broadcasters and the public. Broadcasters provide local news and public affairs, public service campaigns, reduced-price political ads for candidates, equal opportunities for opposing candidates, as well as many other public services. In exchange, broadcasters receive the opportunity to operate radio and TV stations with great flexibility and with minimal government intrusion into programming content. They also receive a reasonable expectation of license renewal if they maintain a record of public service during the license period.

NAB is proud of the many ways in which broadcasters contribute to making their local communities better places to live. We recently presented this subcommittee with nearly 12 pounds of filings on our public service work, detailing just a few examples of how broadcasters serve the public in a variety of ways.

Broadcasters are unique users of the spectrum, in that they, and they alone, have these types of public service obligations. Virtually every other commercial user of spectrum, such as telephone companies, cable TV systems or two-way radio operators, merely receives a license and a frequency. These other users have, with few exceptions, no requirements other than to operate within FCC rules and federal communications law.

Broadcasters also differ from these other commercial users in another important way -- they serve the public at no charge to the user. Radio and television programming is available at absolutely no cost to every and any American who owns a receiver. Most other commercial spectrum users, such as telephone companies or cable systems, charge each and every customer for the right to use their services over the spectrum they have been assigned.

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[1]Public Law 73-416, Section 303.

These two differences between broadcasters and other spectrum holders are important to remember as we look at the issues of spectrum fees and auctions.

Spectrum Auctions -- The Wrong Way to Assign New Spectrum

In its FY 1992 budget, the White House asked Congress to put into place a system of auctions when assigning any new spectrum which may be re-allocated from government to private use. Under the proposal, auctions of an initial 30 megahertz of spectrum freed up for private users would supposedly generate $800 million in FY 1994, $1.2 billion in FY 1995 and $500 million in FY 1996.[2]

In explaining its reasoning for requesting the auction authority, the administration claims that the assignment and allocation of spectrum bands requires administrative hearings that can be "very cumbersome and time-consuming."[3] It asks Congress to allow spectrum auctions as a way to "greatly increase" the flexibility of the nation's telecommunications sector. It further suggests that once such auctions are held, there should be no restrictions on resale of that spectrum. All funds generated from these auctions would go directly to the U.S. Treasury, much as an "asset sale" of federal property, such as land.

NAB's position is that the major argument against auctions is one discussed at the beginning of this statement. Throughout its history, the FCC has awarded broadcast licenses in exchange for requirements that broadcast licensees serve the public interest. Under an auction process, however, that "contract" between broadcaster and government is reduced to a mere financial transaction. Given that situation, NAB can find no public benefit with auctions, particularly in the long run.

Spectrum auctions would allow only those individuals with significant resources to have the opportunity to acquire spectrum licenses. Remember how the FCC has traditionally tested the fitness of applicants for its broadcast licenses. A system based on auctions negates that ability altogether. How can the FCC judge the relative ability or interest of an applicant to serve the public interest if licenses are granted strictly on financial grounds?

In addition, such a system would not allow the Commission to balance properly the need to provide opportunities for minorities and other under-represented persons to obtain FCC broadcast licenses. Under current rules, the FCC's minority preference, tax certificate and distress sales policies provide direct opportunities for minority participation in broadcast ownership. In addition, broadcasters themselves, through such organizations as BROADCAP

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[2]Receipts, User Fees and Other Collections, 1992 Budget of the United States, Table X-6, Part Three at 11.

[3]Economic Report of the President, Council of Economic Advisers, February, 1991 at 146.

(Broadcast Capital Fund), are providing financial assistance to minorities to purchase broadcast properties. In a world of auctions, only those who already have large financial backing would have any real chance to win licenses, thus diminishing further any hopes that smaller operators or minorities could enter the broadcasting field.

In previous discussions of this issue before this subcommittee, you also have heard auction supporters complain about the problems which exist in the awarding of some FCC licenses, such as cellular telephone frequencies through a lottery process. In that system, applicants are chosen merely at random from among all those who apply for licenses. FCC Chairman Al Sikes recently complained that lotteries encourage huge amounts of applicants, since everyone who enters a lottery has a theoretical chance of winning. Auction supporters also complain that often, once a lottery winner has been selected, the winner then transfers the license, earning a huge windfall in the process. By having the government hold such auctions rather than lottery winners, proponents say the federal government would reap the financial benefit.

But if lotteries are a bad way to distribute spectrum, we cannot see how auctions are any better. Again, remember that under an auction system, only those with financial wherewithal will be able to compete for licenses, and that the Commission would have no ability to encourage minority participation in licensing processes. Remember, too, that cellular telephone franchises do not have public service obligations, do not provide free public service, and are not subject to periodic review of their service as broadcasters are at license renewal time. If lotteries are a problem, there are better ways to solve those problems than by auctioning off new spectrum to broadcasters.

We must also object to auctions of broadcast spectrum as a way to increase revenue to the federal government. Broadcasters, like all businesses, pay their fair share of taxes to the government. In addition, we also pay fees to the FCC each time we use FCC services. Broadcasters are obliged to provide many public services to their local communities, and want to continue that proud tradition. But if they must pay for spectrum, their ability to serve the public will be reduced.

In the case of broadcasters, such a system would cause serious problems for an industry already suffering under intense competition from unregulated competitors and a general economic downturn in the advertising market, our sole source of revenue.

Mr. Chairman, those who advocate spectrum auctions cannot have it both ways. They cannot ask broadcasters to pay for the right to obtain licenses to serve their audiences, and then also require those broadcasters to provide the superior level of public service which they currently do. As stated earlier, the services that broadcasters provide free to the public is their "payment" for the use of government-licensed spectrum. To go beyond that is to threaten the very existence of the public service which has enlightened and entertained generations of Americans.

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If generating funds for the FCC is the true goal of fee proponents, shouldn't the $41 million in FCC fees already collected be earmarked for the FCC, rather than put into the U.S. Treasury? The answer is not to add new taxes on broadcasters.

Summary

In conclusion, both the spectrum fee and spectrum auction proposals suffer from serious flaws. They fly in the face of nearly 60 years of the contract between government and broadcaster, where public service is the quid pro quo for the right to use a licensed frequency. They both would divert income from broadcasters, thus making it more difficult for broadcasters to serve the public interest. And they both are arbitrary numbers pulled out of thin air to meet budget targets established by the Office of Management and Budget, not sound communications policy.

Mr. Chairman, that communications policy ought to be set by Congress and by the FCC based on what is most beneficial to the American people. We cannot afford to have valuable new technologies, such as HDTV and DAB, denied to the American people because broadcasters are unable to compete in spectrum auctions or to pay ever-spiraling spectrum taxes. And we should not turn the licensing of American radio and TV stations over to auctions. They consider only a licensee's bank account, not its ability to serve the public or how to provide opportunities for minorities and other under-represented groups to enter the broadcast field.

We urge you to reject both the spectrum auction proposal and the new FCC fees which are before your committee.

Thank you for the opportunity to provide our views on this crucial issue.

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